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Laws of the Territory of Idaho.

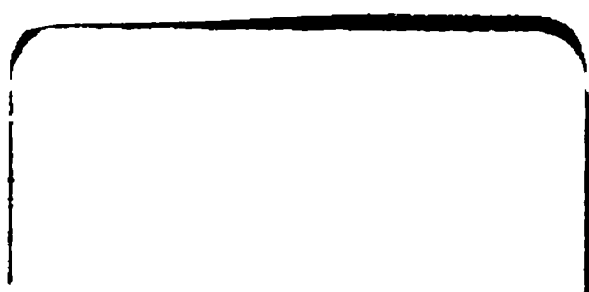
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Name	Location

Idaho (Ter.) Laws, statutes, etc.
Laws of the Territory of Idaho.

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1863



Statutes, Ordinances, etc

L A W S

OF THE

TERRITORY OF IDAHO,

FIRST SESSION;

**CONVENED THE 7TH DAY OF DECEMBER, 1863, AND ADJOURNED
ON THE 4TH DAY OF FEBRUARY, 1864, AT
LEWISTON.**

ALSO, CONTAINING THE

**TERRITORIAL ORGANIC ACT,
DECLARATION OF INDEPENDENCE, THE FEDERAL
CONSTITUTION, THE PRE-EMPTION, AND
NATURALIZATION LAWS, ETC., ETC.**

LEWISTON:

JAMES A. GLASCOCK, TERRITORIAL PRINTER.

1864.

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1863

CERTIFICATE.

TERRITORY OF IDAHO, }
SECRETARY'S OFFICE, LEWISTON. }

I hereby certify that the laws contained in this printed volume are true and literal copies of the enrolled laws passed by the first Legislative Assembly, held during the months of December, January, and February eighteen hundred and sixty-three and four, on file in my office.



WITNESS my hand and the seal
of the Territory hereunto annexed
this first day of July, A. D.,
eighteen hundred and sixty-four.

WILLIAM B. DANIELS,
Secretary of the Territory.

DECLARATION OF INDEPENDENCE.

JULY 4th, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF
AMERICA, IN CONGRESS ASSEMBLED.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these ~~truths~~ truths to be self-evident: That all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such a form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be

changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evince a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

• He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of, their salaries.

He has created a multitude of new offices, and sent hither swarms of officers to harass our people and eat out our substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us :

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states :

For cutting off trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond seas to be tried for pretended offences :

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies.

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our immigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces the separation, and hold them, as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, Free and Independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN ADAMS,
SAMUEL ADAMS,
JOSIAH BARTLETT,
CARTER BRAXTON,
CHARLES CARROLL, of Carrolton
SAMUEL CHASE,

JOSEPH HEWES,
WILLIAM HOOPER,
STEPHEN HOPKINS,
FRANCIS HOPKINSON,
SAMUEL HUNTINGTON,
THOMAS JEFFERSON,

DECLARATION OF INDEPENDENCE.

7

ABRAHAM CLARK,
GEORGE CLYMER,
WILLIAM ELLERY,
WILLIAM FLOYD,
THOMAS LYNCH, JR.,
THOMAS M'KEAN,
ARTHUR MIDDLETON,
LEWIS MORRIS,
ROBERT MORRIS,
JOHN MORTON,
THOMAS NELSON, JR.,
WILLIAM PACA,
ROBERT TREAT PAINE,
JOHN PENN,
BENJAMIN FRANKLIN,
ELBRIDGE GERRY,
BUTTON GWINNETT,
LYMAN HALL,
JOHN HANCOCK,
BENJAMIN HARRISON,
JOHN HART, ·
THOMAS HEYWARD, JR.,

FRANCIS LIGHTFOOT LEE,
RICHARD HENRY LEE,
FRANCIS LEWIS,
PHILLIP LIVINGSTON,
GEORGE READ,
CÆSAR RODNEY,
GEORGE ROSS,
BENJAMIN RUSH,
EDWARD RUTLEDGE,
ROGER SHERMAN,
JAMES SMITH,
RICHARD STOCKTON,
THOMAS STONE,
GEORGE TAYLOR,
MATHEW THORNTON,
GEORGE WALTON,
WILLIAM WHIPPLE,
WILLIAM WILLIAMS,
JAMES WILSON,
JOHN WITHERSPOON,
OLIVER WOLCOTT,
GEORGE WYTHE.

CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

WE the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

CHAPTER I.

- Sec. 1. Legislative powers.**
- 2. House of Representatives; its members; by whom chosen.**
 - Qualifications of representatives.
 - Representatives and taxes, how apportioned.
 - Actual enumeration every ten years; first apportionment of representation.
 - Vacancies, how filled.
 - Powers of the house. Sole power to impeach.
- 3. Senators, how chosen.**
 - The senate divided into three classes; terms, how ascertained; and filling of vacancies.
 - Qualifications of senators.
 - President of the senate.
 - President *pro tem.*, and other officers of senate.
 - Sole power to try impeachments.
 - Extent of judgment in cases of impeachment.
- Sec. 4. Mode of electing senators and representatives.**
 - Meetings of congress.
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 - May determine its own rules, &c.
 - To keep and publish journals, &c.
 - Adjournment.
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 - Disability to hold offices.

7. Revenue bills to originate in house of representatives.
The forms of proceeding on bills.
Ib. on joint resolutions except for adjournment.
8. Powers of congress.
9. Importation of certain persons not to be prohibited until after 1808.
Writ of *habeas corpus*; direct taxes.
No export duty; nor preference of one state to another.
Money to be expended by legal appropriation only.
Titles of nobility, &c.
10. Powers forbidden to the states individually.
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OF THE LEGISLATIVE POWER.

SECTION 1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

OF THE HOUSE OF REPRESENTATIVES.

SECTION 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant in that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

OF THE SENATE.

SECTION 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of any legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

MANNER OF ELECTING MEMBERS.

SECTION 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the place of choosing senators.

CONGRESS TO ASSEMBLE ANNUALLY.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

POWERS.

SECTION 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceeding, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members, of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMPENSATION, ETC., OF MEMBERS.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law,

Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

POWERS OF CONGRESS.

SECTION 8. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States;

To borrow money on the credit of the United States ;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes ;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States ;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures ;

To provide for the punishment of counterfeiting the securities and current coin of the United States ;

To establish post offices and post roads ;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries ;

To constitute tribunals inferior to the supreme court ;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations ;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years ;

To provide and maintain a navy ;

To make rules for the government and regulation of the land and naval forces ;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions ;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress ;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings ;—and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

LIMITATION OF THE POWERS OF CONGRESS.

SECTION 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

LIMITATION OF THE POWERS OF INDIVIDUAL STATES.

SECTION 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports, or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or

ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

- Sec. 1.** Executive power vested in a president.
 Electors of president and vice president.
 Meeting of electors of president, &c.
 Time of choosing electors.
 Qualifications of the president.
 In case of vacancy in the office of president, the vice president to act.
2. Powers of the president.
 3. Other duties and powers.
 4. Officers liable to impeachment.

EXECUTIVE POWER.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

MANNER OF ELECTING.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said

house shall in like manner choose the president. But in choosing the president, the vote shall be taken by the states, the representation from each state having one vote; a quorum for this purpose shall consist of a member, or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.

[NOTE. The above paragraph annulled by amendments which prescribe mode of election.]

TIME OF CHOOSING ELECTORS.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

WHO ELIGIBLE.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

WHEN THE PRESIDENT'S POWER DEVOLVES ON THE VICE PRESIDENT.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall then act accordingly, until the disability be removed, or a president shall be elected.

PRESIDENT'S COMPENSATION.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected,

and he shall not receive within that period any other emoluments from the United States, or any of them.

OATH.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect, and defend the constitution of the United States.

POWERS AND DUTIES.

SECTION 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

OFFICERS REMOVED.

SECTION 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Sec. 1. Judicial power.

Judges to hold their offices during good behavior, &c.

2. Extent of the judicial power.

Original and appellate jurisdiction of the supreme court.

Trial of crimes to be by jury, &c.

3. Definition of treason.

Congress to declare its punishment.

OF THE JUDICIARY.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

JURISDICTION OF THE SUPREME COURT.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to the law and fact, with such exceptions, and under such regulations as the congress shall make.

OF TRIALS FOR CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

OF TREASON.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

- Sec. 1. Credit in one state to the public acts, &c., of another.
- 2. Reciprocity of citizens.
Criminals flying from one state to another, to be delivered up on demand.
Fugitives to be delivered up.
- 3. New states may be admitted into the Union, &c.
Congress to have power over territory, &c.
- 4. Republican form of government guaranteed to each state, &c.

STATE ACTS.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings, of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effects thereof.

PRIVILEGES OF CITIZENS.

SECTION 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

FUGITIVES TO BE DELIVERED UP.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

NEW STATES.

SECTION 3. New states may be admitted by the congress into the union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

TERRITORIAL AND OTHER PROPERTY.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

Mode of amending this Constitution.

AMENDMENTS.

The congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that

no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article : and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

DEBTS.

Assumption of former debts.

This constitution, &c., the supreme law : the state judges bound thereby.

Certain officers to take oath to support constitution.

No religious test.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

SUPREME LAW OF THE LAND.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

OATH.—NO RELIGIOUS TEST.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution : but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

RATIFICATION.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON,
NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM,
RUFUS KING.

CONNECTICUT.

WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WILLIAM LIVINGSTON,
DAVID BREARLEY,
WILLIAM PATTERSON,
JOHNATHAN DAYTON.

PENNSYLVANIA.

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE GLYMER,
THOMAS FITZSIMMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

Attest,

DELEWARE.

GEORGE READ,
GUNNING BEDFORD, JR.
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

MARYLAND.

JAMES M'HENRY,
DANIEL OF ST. THOMAS JENIFER,
DANIEL CARROLL.

VIRGINIA.

JOHN BLAIR,
JAMES MADISON, JR.

NORTH CAROLINA.

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

SOUTH CAROLINA.

JOHN RUTLEDGE,
CHARLES COTTESWORTH PINCK-
NEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

GEORGIA.

WILLIAM FEW,
ABRAHAM BALDWIN,
WILLIAM JACKSON, Secretary.

AMENDMENTS
TO THE
CONSTITUTION OF THE UNITED STATES.

- ART. 1.** Restriction on the power of congress.
2. Rights of the people to bear arms, &c.
3. Quartering of soldiers, &c.
4. Search warrants.
5. Proceedings against persons charged with crimes. Their rights.
6. Further rights.
7. Rights of trial by jury.
8. Excessive bail, &c.
9. Construction of constitution.
10. Powers reserved to the states.
11. Restriction of judicial powers.
12. Mode of electing the president and vice president of the United States.

FREE EXERCISE OF RELIGION.

ARTICLE I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

RIGHT TO BEAR ARMS.

ARTICLE II. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

NO SOLDIER TO BE QUARTERED, ETC.

ARTICLE III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

UNREASONABLE SEARCHES PROHIBITED.

ARTICLE IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CRIMINAL PROCEEDINGS.

ARTICLE V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

MODE OF TRIAL.

ARTICLE VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of council for his defence.

RIGHT OF TRIAL BY JURY.

ARTICLE VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury shall be

otherwise re-examined in any court of the United States, than according to the rules of the common law.

BAIL, FINES, ETC.

ARTICLE VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

RIGHTS NOT ENUMERATED.

ARTICLE IX. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

POWERS RESERVED.

ARTICLE X. The powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

LIMITATIONS OF JUDICIAL POWERS.

ARTICLE XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[This amendment was proposed at the second session of the third congress. It is printed in the Laws of the United States, 1st vol., p. 73, as Article 11.]

ELECTION OF PRESIDENT.

ARTICLE XII. The electors shall meet in their respective states and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence

of the senate and house of representatives, open all certificates, and the votes shall then be counted ;—the person having the greatest number of votes for president, shall be the president, if such a number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act president, as in case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have such majority, then from the two highest numbers on the list, the senate shall choose the vice president ; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

[The foregoing article proposed at the first session of the eighth congress, is printed in the Laws of the United States as Article 12.]

NOTE.—Another amendment was proposed as Article XIII., at the second session of the eleventh congress, but, not having been ratified by a sufficient number of states, has not yet become valid as a part of the constitution of the United States. It is erroneously given as a part of the constitution, in page 74, vol., 1. Laws of the United States.

**ORGANIC ACT OF THE
TERRITORY OF IDAHO,**

**AN ACT TO PROVIDE A TEMPORARY GOVERNMENT FOR THE TERRITORY
OF IDAHO.**

- Enc. 1. Territory of Idaho, boundaries.
2. Executive power, governor, etc.
3. Secretary, when to act as governor.
4. Legislative power, what constitutes, length of session, etc.
5. Voters at first election.
6. Veto power of governor, taxes, etc.
7. District, county, or township officers.
8. Members of assembly, who may be.
9. Judicial power, with whom vested.
10. Territorial officers, appointment of, salaries, pay of.
11. Members of assembly, session of, etc.
12. Seat of government, delegate, constitutional laws, etc.
13. Public lands, school sections.
14. Judicial districts and judges.
15. Officers to give bonds.
16. Treaties with Indians, agencies, etc.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That all that part of the territory of the United States included within the following limits, to-wit: Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; then follow down the said channel of Snake river to a point opposite the mouth of the Kooskooskia, or Clearwater river; thence due north to the forty-ninth parallel of latitude; thence east along said parallel to the twenty-

seventh degree of longitude west of Washington ; thence south along said degree of longitude to the northern boundary of Colorado Territory ; thence west along said boundary to the thirty-third degree of longitude west of Washington ; thence north along said degree to the forty-second parallel of latitude ; thence west along said parallel to the eastern boundary of the State of Oregon ; thence north along said boundary to the place of beginning. And the same is hereby created into a temporary government, by the name of the Territory of Idaho: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory or changing its boundaries in such manner and at such time as congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided, further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory ; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Idaho, until said tribe shall signify their assent to the president of the United States to be included within said Territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said Territory of Idaho shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said Territory, and shall be commander-in-chief of the militia, and superintendent of Indian affairs thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieve for offences against the laws of the United States until the decision of the president or the United States can be made known thereon ; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a secre-

tary of said Territory, who shall reside therein, and shall hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives for the use of congress; and in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted,* That the legislative power and authority of said Territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of thirteen members possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made as nearly equal as practicable among the several counties or districts for the election of the council and representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time

and places, and be conducted in such manner both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly; *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall have been an actual resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said Territory shall, before it becomes a law, be presented to the governor of the Territory; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the

house in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return; in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said Territory by act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Idaho. The governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said Territory.

SEC. 9. *And be it further enacted*, That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annu-

ally; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common-law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writs of *habeas corpus* involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases shall be made to the supreme court of said Territory, the same as in other cases.

The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington Territory now receive for similar services.

SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said Territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Washington. There shall also be a Marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Washington, and shall, in addition be paid two hundred dollars annually as a compensation for extra services.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be appointed by the president of the United States, by and with the advice and consent of the Senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectfully, take an oath or affirmation, before the district judge or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificate shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said Territory, before they act as such shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars, the chief justice and associate justices shall

receive an annual salary of two thousand five hundred dollars, the secretary shall receive an annual salary of two thousand dollars; the said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each per day, during their attendance at the sessions thereof and four dollars each for every twenty miles traveled in going to and returning from said sessions estimated according to the nearest usually travelled route, and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms and doorkeeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum to be expended by the governor to defray the contingent expenses of the Territory, including the salary of the clerk of the executive department; and there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the Territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the governor and secretary of the Territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. *And be it further enacted*, That the legislative assembly of the Territory of Idaho shall hold its first session at such time and place in said Territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of

government for said Territory at such place as they may deem eligible: *Provided*, That the seat of government fixed by the governor and legislative assembly shall not be at any time changed, except by an act of the said assembly duly passed, and which shall be approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

SEC. 13. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said House of Representatives; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said Territory of Idaho as elsewhere within the United States.

SEC. 14. *And be it further enacted*, That when the lands in the said Territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the states and territories hereafter to be erected out of the same.

SEC. 15. *And be it further enacted*, That, until otherwise provided by law, the governor of said Territory may define the judicial districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 16. *And be it further enacted,* That all officers to be appointed by the president of the United States, by and with the advice and consent of the senate, for the Territory of Idaho, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

SEC. 17. *And be it further enacted,* That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the offices of said agencies or superintendents.

APPROVED, March 3d, 1863.

ACT OF CONGRESS

CREATING THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON. AND TO PROVIDE FOR THE SURVEY, AND TO MAKE DONATIONS TO SETTLERS OF THE SAID PUBLIC LANDS.

- Sec. 1.** A surveyor general to be appointed, his duties and authority.
2. Surveyor general's office to be established where the president shall designate; salary of surveyor general—appropriation for clerk hire and office rent.
 3. The secretary of the interior to designate the method of the survey; proviso as to land unfit for cultivation—the cost of the survey not to exceed eight dollars per mile.
 4. Donations of 640 and 320 acres to citizens of the United States—no alien to be entitled to the benefit of this act unless his declaration of intention is made—the donation to embrace the land occupied—certain contracts to be void—persons claiming under this act not to hold under the treaty of '46.
 5. Donation of 320 and 160 acres to citizens of the United States up to 1st Dec. 1853—no person to receive but one patent, and no mineral lands to be located.
 6. Notifications to be filed—when, where and how record to be kept; surveyor general to decide all conflicts of boundaries; proviso as to lines running with section lines.
 7. Of final proof and the issuing of patents.
 8. Upon the death of a claimant his rights to extend to his heirs at law.
 9. Certain claims invalid.
 10. Two townships of land granted to the territory of Oregon to establish a university.
 11. "The Oregon City Claim" granted to the territory, except certain portions thereof.
 12. Affidavits of cultivation, &c., to be made before the surveyor general, and to be recorded by him.
 13. Questions arising under this act to be decided by the surveyor general—duty of the surveyor general.
 14. Land not to be claimed under this act; proviso as to military reservations.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,*

That a surveyor general shall be appointed for the territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the territory of Oregon, as are vested in and required of the surveyor of lands in the United States northwest of Ohio, except hereinafter provided.

SEC. 2. *And be it further enacted,* That the said surveyor general shall establish his office at such place, within the said territory, as the president of the United States, may from time to time direct; he shall be allowed an annual salary of two thousand five hundred dollars, to be paid quarter yearly, and to commence at such time as he shall enter into bond, with competent security, for the faithful discharge of the duties of his office. There shall be, and hereby is appropriated the sum of four thousand dollars, or as much thereof as is necessary for clerk hire in his office: and the further sum of one thousand dollars per annum for office rent, fuel, books, stationery, and other incidental expenses of his office, to be paid out of the appropriation for surveying the public lands,

SEC. 3 *And be it further enacted,* That if, in the opinion of the secretary of the interior it be preferable, the surveys in said territory shall be made after what is known as the geodetic method, under such regulations, and upon such terms, as may be provided by the secretary of the interior, or other department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys, as congress may, from time to time authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said surveyor to cause a base line, and meridian to be surveyed, marked and established, in the usual manner, at or near the mouth of the Wallamet river; and he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States, which may be in force, the district of country lying between the summit of the Cascade mountains and the Pacific ocean, and south and north of the Columbia river: *Provided, however,* that none other than township lines shall be run, where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run; and that the whole cost of surveying shall not exceed the rate of eight dollars per mile, for every mile and part of mile actually surveyed and marked.

SEC. 4. *And be it further enacted,* That there shall be and hereby is granted to every white settler or occupant of the

public lands, American half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of December, eighteen hundred and fifty-one, now residing in said territory, or who shall become a resident thereof, on or before the first day of December, eighteen hundred and fifty, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one-half section, or three hundred and twenty acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section, or six hundred and forty acres, one-half to himself and the other half to his wife, to be held by her in her own right; and the surveyor general shall designate the part enuring to the husband and that to the wife, and enter the same on the records of his office; and in all cases where such married persons have complied with the provisions of this act, so as to entitle them to the grant as above provided, whether under the late provisional government of Oregon, or since, and either shall have died before patent issues, the survivor and children, or heirs of the deceased shall be entitled to the share or interest of the deceased, in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed according to the laws of Oregon: *Provided*, That no alien shall be entitled to a patent to land, granted by this act, until he shall produce to the surveyor general of Oregon, record evidence that his naturalization as a citizen has been completed; but if any alien, having made his declaration of an intention to become a citizen of the United States, after the passage of this act, shall die before his naturalization shall be completed, the possessory right acquired by him under the provisions of this act, shall descend to his heirs at law, or pass to his devisees, to whom, as the case may be, the patent shall issue: *Provided, further*, That in all cases provided for in this section, the donation shall embrace the land actually occupied and cultivated by the settler thereon: *Provided, further*, That all future contracts, by any person or persons entitled to the benefit of this act, for the sale of the land to which he or they may be entitled under this act, before he or they have received a patent therefor, shall be void: *Provided, further*, However, that this section shall not be so construed as to allow those claiming rights under the treaty with Great Britain, relative to the Oregon territory, to claim both under this grant and the treaty, but merely

to secure them the election, and confine them to a single grant of land.

SEC. 5. *And be it further enacted,* That to all white male citizens of the United States, or persons who shall have made a declaration of intention to become such, above the age of twenty-one years, emigrating to, and settling in said territory, between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; and to all white male American citizens, not hereinbefore provided for, becoming one and twenty-years of age in said territory, and settling there between the times last aforesaid, who shall in other respects comply with the foregoing section and the provisions of this law, there shall be, and hereby is granted the quantity of one quarter section, or one hundred and sixty acres of land, if a single man; or if married, or if he shall become married within one year from the time of arriving in said territory, or within one year after becoming twenty-one years of age as aforesaid, then the quantity of one half section, or three hundred and twenty acres, one half to the husband, and the other half to the wife in her own right, to be designated by the surveyor general as aforesaid: *Provided always,* that no person shall ever receive a patent for more than one donation of land in said territory in his or her own right; *Provided,* that no mineral lands shall be located or granted under the provisions of this act.

SEC. 6. *And be it further enacted,* That within three months after the survey has been made, or where the survey has been made before the settlement commenced, then within three months from the commencement of such settlement, each of said settlers shall notify the surveyor general, to be appointed under this act, of the precise tract or tracts claimed by them respectfully, under this law, and in all cases it shall be in a compact form; and where it is practicable so to do, the land so claimed shall be taken as nearly as practicable, by legal sub-divisions; but where that cannot be done, it shall be the duty of the said surveyor general to survey and mark each claim, with the boundaries as claimed, at the request and expense of the claimant; the charge for the same in such case, not to exceed the price paid for surveying public lands. The surveyor general shall enter a description of such claims in a book to be kept by him for that purpose, and note, temporarily on the township plats, the tract or tracts of land so designated, with the boundaries; and whenever a conflict of boundaries shall arise prior to issuing the patent, the same shall be determined by the surveyor general; *Provided,* that after the first day of December next, all claims shall be bounded by lines

running east and west, and north and south: *And provided further*, that after the survey is made, all claims shall be made in conformity to the same, and in compact form.

SEC. 7. *And be it further enacted*, That within twelve months after the surveys have been made, or where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act, shall prove to the satisfaction of the surveyor general, or of such other officer as may be appointed by law for that purpose, that the settlement and cultivation required by this act had been commenced, specifying the time of commencement; and at any time after the expiration of four years from the date of such settlement, whether made under the laws of the late provisional government or not, shall prove in like manner, by two disinterested witnesses, the fact of continued residence and cultivation required by the fourth section of this act; and upon such proof being made, the surveyor general, or such other officer appointed by law for that purpose, shall issue certificates, under such rules and regulations as may be prescribed by the commissioner of the general land office, setting forth the facts in the case, and specifying the land to which the parties are entitled, And the said surveyor general shall return the proof so taken, to the office of the commissioner of the general land office, and if the said commissioner shall find no valid objection thereto, patents shall issue for the land, according to the certificates aforesaid, upon the surrender thereof.

SEC. 8. *And be it further enacted*, That upon the death of any settler before the expiration of the four years, continued possession required by this act, all the rights of the deceased under this act, shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

SEC. 9. *And be it further enacted*, That no claim to a donation right under the provisions of this act, upon sections sixteen and thirty-six, shall be valid or allowed, if the residence and cultivation upon which the same is founded, shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for government purposes, unless the residence or cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes.

SEC. 10. *And be it further enacted*, That there be, and hereby

is granted to the territory of Oregon, the quantity of two townships of land in said territory, west of the Cascade mountains, and to be selected in legal subdivisions after the same has been surveyed, by the legislative assembly of said territory, in such manner as it may deem proper, one to be located north, and the other south of the Columbia river, to aid in the establishment of a university in the territory of Oregon, in such manner as the said legislative assembly may direct, the selection to be approved by the surveyor general.

SEC. 11. *And be it further enacted*, That what is known as the "Oregon city claim," excepting the Abernethy island, which is hereby confirmed to the legal assignees of the Wal-lamett milling and trading companies, shall be set apart and be at the disposal of the legislative assembly, the proceeds thereof to be applied by said legislative assembly to the establishment and endowment of a university, to be located at such place in the territory as the legislative assembly may designate: *Provided, however*, that all lots and parts of lots in said claim, sold or granted by Doctor John McLaughlin, previous to the fourth of March, eighteen hundred and forty-nine, shall be confirmed to the purchaser or donee, or their assigns, to be certified to the commissioner of the general land office, by the surveyor general, and patents to issue on said certificates, as in other cases: *Provided further*, that nothing in this act contained, shall be so construed and executed, as in any way to destroy or affect any rights to land in said territory, holden or claimed under the provisions of the treaty or treaties, existing between this country and Great Britain.

SEC. 12. *And be it further enacted*, That all persons claiming land under any of the provisions of this act, by virtue of settlement and cultivation commenced subsequent to the first of December, in the year eighteen hundred and fifty, shall first make affidavit before the surveyor general, who is hereby authorized to administer all such oaths or affirmations, or before some competent officer, that the land claimed by them is for their own use and cultivation; that they are not acting directly or indirectly, as agent for, or in employment of others, in making such claims; and that they have made no sale, or transfer, or any arrangement, or agreement, or any sale, transfer or alienation of the same, or by which the said land shall enure to the benefit of any other person. And all affidavits required by this act, shall be entered of record, by the surveyor general, in a book to be kept by him for that purpose; and on proof, before a court of competent jurisdiction, that any of such oaths or affirmations are false or fraudulent,

the persons making such false or fraudulent oaths or affirmations, shall be subject to all the pains and penalties of perjury.

SEC. 13. *And be it further enacted,* That all questions arising under this act, shall be adjudged by the surveyor general as preliminary to a final decision according to law; and it shall be the duty of the surveyor general, under the direction of the commissioner of the general land office, to cause proper tract books to be opened for the lands in Oregon, and to do and perform all other acts and things necessary and proper to carry out the provisions of this act.

SEC. 14. *And be it further enacted,* That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the president of the United States, for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operation of this act: *Provided,* that if it shall be deemed necessary, in the judgment of the president, to include in any such reservation the improvements of any settler made previous to the passage of this act, it shall, in such case, be the duty of the secretary of war to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

APPROVED, September 27, 1850.

AN ACT

TO AMEND AN ACT, ENTITLED "AN ACT TO CREATE THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, AND TO PROVIDE FOR THE SURVEY, AND TO MAKE DONATIONS TO THE SETTLERS OF THE SAID PUBLIC LANDS APPROVED SEPTEMBER, 27, 1850."

- SEC. 1. Settlers allowed to purchase their lands, after two years' residence, at one dollar and twenty-five cents per acre.
2. How a patent may issue to such settlers.
 3. Surveyor general to keep a record and make report to general land office.
 4. Surveyor general to give additional bond.
Compensation for such duties.

- Sec. 5. Provisions of the original act extended.
6. Certain persons debarred benefit of the act to which this is an amendment.
7. Certain lands subject to private entry after the first of April, 1855.
Register and receiver to be appointed.
Their pay and duties.
8. Certain widows entitled to the benefit of the land law.
9. Limitation of reservations.
10. The surveyor general subject to the provisions of congress for the safe keeping and disbursements of public revenue.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That all persons who have located, or may hereafter locate lands in the territory of Oregon, in accordance with the provisions of an act entitled "an act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands," approved September twenty-seventh, eighteen hundred and fifty, and of which survey shall have been made or may hereafter be had, in lieu of the term of continued occupation after settlement, as provided by said act, shall be permitted, after occupation for two years of the land so claimed, to pay into the hands of the surveyor general of said territory, at the rate of one dollar and twenty-five cents per acre for the land so claimed, located, and surveyed as aforesaid; and upon the death of any settler before the expiration of the two years' continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs-at-law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act, up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

SEC. 2. *And be it further enacted,* That upon the payment of money for lands as aforesaid to the said surveyor general, he shall issue his certificate of such payment, together with an accurate copy of the survey of the land so located and purchased, to the purchaser thereof, and upon the filing of which said certificate and copy of survey in the office of the commissioner of the general land office, a patent shall issue therefor as in other cases.

SEC. 3. *And be it further enacted,* That it shall be the duty of the said surveyor general to keep and preserve a record of all moneys so received, and to make out and transmit quarterly, to the commissioner of the general land office, an accurate report of the moneys so received by him as aforesaid.

SEC. 4. *And be it further enacted,* That it shall be the duty of the said surveyor general immediately upon the taking effect of this act, to enter into security in the sum of fifty thousand dollars, conditioned for the safe keeping of all moneys re-

ceived by him as surveyor general according to law: *Provided, however,* That, in order to compensate the surveyor general of said territory for the additional labors and responsibilities imposed upon him by this act, in receiving, safe-keeping, paying over, and accounting for the moneys aforesaid, he shall receive a per centum on all such sums, which shall include the pay for clerk hire, together with all costs and expenses incidental to such special services in any one year: *Provided,* The salary and per centage of said surveyor general, and for clerk hire, shall not exceed four thousand dollars for any one year.

SEC. 5. *And be it further enacted,* That the provisions of the act to which this is an amendment, be, and the same are hereby extended and continued in force until the first day of December, eighteen hundred and fifty-five.

SEC. 6. *And be it further enacted,* That every person entitled to the benefit of the fourth section of the act of which this is amendatory, who was resident in said territory on or prior to the first of December, eighteen hundred and fifty, shall be, and hereby is required to file with the surveyor general of said territory, in advance of the time when the public surveys shall be extended over the particular land claimed by him, where those surveys shall not have been made previous to the date of this act, a notice in writing, setting forth his claim to the benefits of said section, and citing all required particulars in reference to such settlement claim; and all persons failing to give such notice on or prior to the first of December, eighteen hundred and fifty-three, shall be thereafter debarred from ever receiving any benefit under said fourth section. And all persons who, on the first of December, eighteen hundred and fifty-three, shall have settled on surveyed lands in said territory, in virtue of the provisions of the fifth section of the act of which this is amendatory, who shall fail to give notice in writing of such settlement, specifying the particulars thereof to the surveyor general of said territory, on or prior to the first of April, eighteen hundred and fifty-five, shall be thereafter debarred from ever receiving the benefits of said fifth section.

SEC. 7. *And be it further enacted,* That from and after the first of April, eighteen hundred and fifty-five, all public lands within the limits of the townships surveyed or to be surveyed in said territory, west of the Cascade mountains, which shall not have been claimed under the provisions of the fourth and fifth sections of the act of which this is amendatory, or reserved for public uses by law or order of the president, and excepting also mineral lands, shall be subject to public sale and private entry as other public lands in the United States;

and so soon as he shall deem expedient, the president of the United States shall, by and with the advice and consent of the senate, appoint a receiver of public moneys for the territory of Oregon, west of the Cascade mountains, who shall give bond and security, in the penalty of fifty thousand dollars, for the faithful discharge of his official trust, and whose duties, under the laws in relation to the public lands of the United States in said territory, shall be the same as those of other like officers of the United States, and who shall be allowed not exceeding five hundred dollars per annum for the safe keeping and accounting for the public moneys by him received, including all charges for office rent and clerk hire; and at such time as the president of the United States shall deem it expedient, he shall appoint, by and with the advice and consent of the senate, a register of the land office for the territory of Oregon, west of the Cascade mountains, who shall enter into bond, with sufficient security, for the faithful discharge of his official duties, as other like officers, and whose duties and authority, under the direction of the secretary of the interior, shall be the same as those imposed by law on other like officers, consistently with the provisions of this act and of the act of which this is amendatory, and whose compensation shall be equal to that allowed to the receiver of public moneys to be appointed under this act; and until such register shall have been appointed, and entered upon the discharge of his official duties, the surveyor general of Oregon shall perform all the duties which appertain to such office.

SEC. 8. *And be it further enacted,* That each widow now residing in Oregon territory, and such others as shall locate in said territory, whose husband, had he lived, would have been entitled to a claim under the provisions of the act to which this is an amendment, shall be entitled under the provisions and requirements of said act, to the same quantity of land that she would have been but for the death of her husband; and that in case of the death of the widow prior to the expiration of the four years' continued possession required by said act, to which this is an amendment, all the rights of the deceased shall inure unto, and be vested in, the heirs-at-law of such widow.

SEC. 9. *And be it further enacted,* That all reservations heretofore, as well as hereafter, made in pursuance of the fourteenth section of the act to which this is an amendment, shall for magazines, arsenals, dock yards, and other needful public uses, except for forts, be limited to an amount not exceeding twenty acres for each and every one of said objects at any one point or place, and for forts to an amount not exceeding

six hundred and forty acres at any one point or place: *Provided*, That if it shall be deemed, in the judgment of the president, to include in any such reservation the improvement of any settler made previous to such reservation, it shall, in such case, be the duty of the secretary of war to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money in the treasury not otherwise appropriated.

SEC. 10. *And be it further enacted*, That the said surveyor general, in the discharge of his duties under this act, shall be subject to all the provisions of the act entitled "an act to provide for the better organization of the treasury, and for the collection, safe keeping, transfer, and disbursement of the public revenue," approved August sixth, eighteen hundred and forty-six; and all acts and parts of acts in conflict with the provisions of this act be, and the same are hereby repealed.

APPROVED, February 14, 1853.

AN ACT

TO AMEND THE ACT, APPROVED SEPTEMBER TWENTY-SEVENTH, EIGHTEEN HUNDRED AND FIFTY, TO CREATE THE OFFICE OF SURVEYOR GENERAL OF THE PUBLIC LANDS IN OREGON, &c., AND ALSO THE ACT AMENDATORY THEREOF, APPROVED FEBRUARY NINETEENTH, EIGHTEEN HUNDRED AND FIFTY-THREE.

- SEC. 1. Town sites not to be included in donations heretofore made. Proviso changing the time for the purchase of lands to one, instead of two years.
2. That portion of the law making contracts for the sale of lands by settlers, repealed.
3. Pre-emption privilege extended to lands in Oregon and Washington territories. Notifications to be filed within thirty days after requested to do so. Time further extended.
4. Two townships of land granted to this territory for university purposes.
5. Orphans entitled to 160 acres of land. Surveyor general to set apart the land for orphans.
6. All the provisions of this act extended to Washington territory, and a register and receiver to be appointed. Their compensation.
7. A surveyor general to be appointed. His duties, powers and obligations the same as in Oregon.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the donations hereafter to be surveyed in Oregon and Washington territories, claimed under any of the provisions of the act to create the office of surveyor general of the public lands in Oregon, &c., approved September twenty-seventh, eighteen hundred and fifty, shall in no case include a townsite, or lands settled upon for purposes of business or trade, and not for agriculture;—and all legal sub-divisions included in whole or in part in such town sites, or settled upon for purposes of business or trade, and not for agriculture, shall be subject to the operations of the act of May twenty-third, eighteen hundred and forty-four, “for the relief of citizens of towns upon lands of the United States, under certain circumstances,” whether such settlements were made before or after the surveys: *Provided, however,* That the period of two years’ occupancy required of settlers before they can purchase the lands claimed by them under the provisions of the first section of the act of February fourteenth, eighteen hundred and fifty-three, above mentioned, shall be, and the same is hereby reduced to one year.

SEC. 2. *And be it further enacted,* That the proviso to the fourth section of the act of twenty-seventh September, eighteen hundred and fifty, above mentioned, by which all contracts for the sale of lands claimed under that law, before the issue of patents therefor are declared void, shall be, and the same is hereby repealed: *Provided,* That no sale shall be deemed valid, unless the vendor shall have resided four years upon the land.

SEC. 3. *And be it further enacted,* That the pre-emption privilege granted by the act of fourth September, eighteen hundred and forty-one, shall be, and the same is hereby extended to the lands in Oregon and Washington territories, whether surveyed or unsurveyed, not rightfully claimed, entered, or reserved, under the provisions of this act, or the acts of which it is amendatory, nor excluded by the terms of the said act of eighteen hundred and forty-one, with the exception of unsurveyed lands as above mentioned; and all settlers on unsurveyed lands in said territories shall give notice to the surveyor general, or other duly authorized officer, of the particular tract claimed under this section, within six months after the survey of such lands is made and returned. And all persons claiming donations under this act, or the acts of which it is amendatory, shall, in like manner give notice to the surveyor general, or other duly authorized officer, of the particular lands claimed as such donations, within thirty days after being requested to

do so by such officer; and failing such notice in either case, the claimant or claimants shall forfeit all right and claim thereto; *Provided, however,* that the time limited by the sixth section of the act of eighteen hundred and fifty-three, in which claimants under the act of eighteen hundred and fifty are required to give notice of their claims, shall be, and the same is hereby extended to the first of December, eighteen hundred and fifty-five, except in cases where the surveyor general shall request them to do so, as above provided.

SEC. 4. *And be it further enacted,* That in lieu of the two townships of land granted to the territory of Oregon by the tenth section of the act of eighteen hundred and fifty, for universities, there shall be reserved to each of the territories of Washington and Oregon, two townships of land of thirty-six sections each, to be selected in legal subdivisions for university purposes, under the direction of the legislatures of said territories respectively.

SEC. 5. *And be it further enacted,* That in any case where orphans have been, or may be left in either of the said territories, whose parents, or either of them while living, would have been entitled to a donation under this act, or either of those of which it is amendatory, said orphans shall be entitled to a quarter section of land on due proof being made to the satisfaction of the surveyor general, subject to the decision of the secretary of the Interior. Said land to be set off to them by the surveyor general in good agricultural land, not reserved, or otherwise appropriated, under any law of congress; and, in case of the death of either or any of said orphans, after their lands shall have been designated by the surveyor general, the right or rights of the deceased shall vest in the survivor or survivors.

SEC. 6. *And be it further enacted,* That all the provisions of this act, and the acts of which it is amendatory, shall be extended to all the lands in Oregon and Washington territories; and, for the purpose of carrying said acts into effect in said territories, the president shall be, and he is hereby authorized to appoint a register and receiver for each of said territories, whose powers, duties, obligations and responsibilities, shall be the same as are now prescribed by law for other land officers, and for the surveyor general of Oregon, so far as they apply to such officers. They shall keep their offices at such place as the president shall, from time to time direct; and their compensation shall be twenty-five hundred dollars each per annum, and office rent; but they shall be entitled to no fees or other emolument of any kind whatsoever, except the receiver's actual and necessary expenses in depositing; and, on satisfactory

proof that either of said officers, or any other officer, has charged or received fees or other rewards not authorized by law, he shall be forthwith removed from office.

SEC. 7. *And be it further enacted,* That the territory of Washington shall be erected into a separate surveying district, and the president of the United States is hereby authorized to appoint a surveyor general for the same, who shall hold his office at such place as the president may direct, and the location thereof may be changed from time to time, if, in the judgment of the president, the public interest should require it, and the powers, duties, obligations, responsibilities and emoluments of the said surveyor general shall be the same as are now prescribed by law for the surveyor general of Oregon.

APPROVED, 17th July, 1854.

AN ACT

TO APPROPRIATE THE PROCEEDS OF THE SALES OF THE PUBLIC LANDS,
AND TO GRANT PRE-EMPTION RIGHTS.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That from and after the thirty-first day of December, in the year of our Lord, one thousand, eight hundred and forty-one, there be allowed and paid to each of the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas and Michigan, over and above what each of the said states is entitled to by the terms of the compacts entered into between them and the United States, upon their admission into the Union, the sum of ten per centum upon the nett proceeds of the sales of the public lands which, subsequent to the day aforesaid, shall be made within the limits of each of said states respectively: *Provided,* That the sum so allowed to the said states respectively, shall be in nowise affected or diminished on account of any sums which have been heretofore, or shall be hereafter applied to the construction or continuance of the Cumberland road, but that the disbursements for the road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said states.

SEC. 2. *And be it further enacted,* That after deducting the said ten per centum, and what, by the compacts aforesaid, has heretofore been allowed to the states aforesaid, the residue of the nett proceeds, shall be ascertained by deducting from

the gross proceeds all the expenditures of the year for the following objects: Salaries and expenses on account of the general land office, expenses for surveying public lands, salaries and expenses in the surveyor general's offices: salaries, commissions and allowances to the registers and receivers: the five per centum to new states of all the public lands of the United States, wherever situated, which shall be sold subsequent to the said thirty-first day of December, shall be divided among the twenty-six states of the Union and the District of Columbia, and the territories of Wisconsin, Iowa and Florida, according to their respective federal representative population as ascertained by the last census, to be applied by the legislatures of the said states, to such purposes as the said legislatures may direct: *Provided*, That the distributive share to which the District of Columbia shall be entitled, shall be applied to free schools, or education in some other form, as congress may direct: *And provided also*, That nothing herein contained shall be construed to the prejudice of further applications for a reduction of the price of the public lands, or to the prejudice of applications for a transfer of the public lands on reasonable terms, to the states within which they lie, or to make such future disposition of the public lands, or any part thereof as congress may deem expedient.

SEC. 3. *And be it further enacted*, That the several sums of money received in the treasury as the nett proceeds of the sales of the public lands shall be paid at the treasury half yearly on the first day of January and July in each year, during the operation of this act, to such person or persons as the respective legislatures of the said states and territories, or the governors thereof in case the legislatures shall have made no such appointment, shall authorize and direct to receive the same.

SEC. 4. *And be it further enacted*, That any sum of money which, at any time may become due and payable to any state of the Union, or to the district of Columbia, by virtue of this act, as the portion of the said state or district, of the proceeds of the sales of the public lands, shall be first applied to the payment of any debt due and payable from the said state or district to the United States: *Provided*, That this shall not be construed to extend to the sums deposited with the states under the act of congress of twenty-third June, eighteen hundred and thirty-six, entitled "an act to regulate the deposits of the public money," nor to any sums apparently due to the United States as balances of debts growing out of the transactions of the revolutionary war.

SEC. 5. *And be it further enacted*, That this act shall continue and be in force until otherwise provided by law, unless

the United States shall become involved in war with any foreign power, in which event, from the commencement of hostilities, this act shall be suspended during the continuance of such war: *Provided, nevertheless,* That if, prior to the expiration of this act, any new state or states shall be admitted into the Union, there be assigned to such new state or states, the proportion of the proceeds accruing after their admission into the Union, to which such new state or states may be entitled, upon the principles of this act, together with what such state or states may be entitled to by virtue of compacts to be made on their admission into the Union.

SEC. 6. *And be it further enacted,* That there shall be annually appropriated for completing the surveys of said lands, a sum not less than one hundred and fifty thousand dollars; and the minimum price at which the public lands are now sold at private sale shall not be increased, unless congress shall think proper to grant alternate sections along the line of any canal or other internal improvement, and at the same time to increase the minimum price of the sections reserved; and in case the same shall be increased by law, except as aforesaid, at any time during the operation of this act, then so much of this act as provides that the nett proceeds of the sales of the public lands shall be distributed among the several states, shall from and after the increase of the minimum price thereof, cease and become utterly null and of no effect, anything in this act to the contrary notwithstanding: *Provided,* That if, at any time during the existence of this act, there shall be an imposition of duties on imports inconsistent with the provision of the act of March second, one thousand eight hundred and thirty-three, entitled, "An act to modify the act of the fourteenth of July, one thousand eight hundred and thirty-two, and all other acts imposing duties on imports," and beyond the rate of duty fixed by that act, to wit: twenty per cent. on the value of such imports, or any of them, then the distribution provided in this act shall be suspended and shall so continue until the cause of its suspension shall be removed, and when removed, if not prevented by other provisions of this act, such distribution shall be resumed.

SEC. 7. *And be it further enacted,* That the secretary of the treasury may continue any land district, in which is situated the seat of government of any one of the states, and may continue the land office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when, in his opinion, such continuance may be required by public convenience, or in order to close the land system in such state at a convenient point,

under the provisions of the act on that subject, approved twelfth of June, one thousand eight hundred and forty.

SEC. 8. *And be it further enacted*, That there shall be granted to each state specified in the first section of this act, five hundred thousand acres of land, for purposes of internal improvement: *Provided*, that to each of the said states which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such state has received as aforesaid, make five hundred thousand acres, the selections in all of the states to be made within their limits, respectively, in such manner as the legislatures thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of congress or proclamation of the president of the United States, which said locations may be made at any time after the lands of the United States in said states respectively, shall have been surveyed according to existing laws. And there shall be, and hereby is, granted to each new state that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such state before its admission, and while under a territorial government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

SEC. 9. *And be it further enacted*, That the lands herein granted to the states above named, shall not be disposed of at a price not less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the nett proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement, within the states aforesaid, respectively, namely: roads, railways, bridges, canals and improvement of water-courses, and draining of swamps, and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail, and munitions of war, and for the passage of their troops, without the payment of any toll whatever.

SEC. 10. *And be it further enacted*, That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen as required by the naturalization laws, who since the first day of June, A. D., eighteen hundred and forty, has made, or hereafter shall make a settle-

ment in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is hereby authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions: No person shall be entitled to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any state or territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same state or territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the president of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the state of Indiana, or which may be acquired of the Wyandot tribe of Indians in the state of Ohio, or other Indian reservations to which the title has been or may be extinguished by the United States, at any time during the operation of this act; no sections of land reserved to the United States, alternate to other sections granted to any of the states for the construction of any canal, railroad, or other public improvement, no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and agriculture; and no lands on which are situated any known salines or mine, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the president of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing Rabbit creek, be, and the same is hereby repealed; *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

SEC. 11. *And be it further enacted*, That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the

first settlement, provided that such persons shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers, shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to, and a revision by the secretary of the treasury of the United States.

SEC. 12. *And be it further enacted,* That prior to any entries being made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the secretary of the treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SEC. 13. *And be it further enacted,* That before any person claiming the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any state or territory of the United States; nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the government of the United States, should inure in whole or in part, to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of *bona fide* purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office, of such district, and to transmit a duplicate copy to the general land office, either of which shall be good and sufficient evidence that such oath was administered according to law.

SEC. 14. *And be it further enacted,* That this act shall not delay the sale of any of the public lands of the United States

beyond the time which has been, or may be appointed by the proclamation of the president, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales aforesaid.

SEC. 15. *And be it further enacted*, That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall, in the first case, within three months after the passage of the same, and in the last, within thirty days next after the date of such settlement, file with the register of the proper district a written statement describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act: and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

SEC. 16. *And be it further enacted*, That the two per cent. of the nett proceeds of the lands sold, or that may hereafter be sold by the United States in the state of Mississippi, since the first day of December, eighteen hundred and seventeen, and by the act entitled "an act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," and all acts supplemental thereto reserved for the making of a road or roads leading to said state, be, and the same is hereby relinquished to the state of Mississippi, payable in two equal instalments; the first to be paid on the first of May, eighteen hundred and forty-two, and the other on the first of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may accrue after said period: *Provided*, That the legislature of said state shall first pass an act declaring their acceptance of said relinquishment in full of said fund accrued and accruing, and also embracing a provision, to be unalterable without the consent of congress, that the whole of said two per cent. fund shall be faithfully applied to the construction of a railroad leading from Brandon, in the state of Mississippi, to the eastern boundary of said

state, in the direction, as near as may be, of the towns of Selma, Cahawba, and Montgomery, in the state of Alabama.

SEC. 17. *And be it further enacted*, That the two per centum of the net proceeds of the lands sold by the United States, in the State of Alabama, since the first day of September, eighteen hundred and nineteen, and reserved by the act entitled "an act to enable the people of Alabama territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," for the making of a road or roads leading to the said state, be, and the same is hereby relinquished to the said state of Alabama, payable in two equal instalments, the first to be paid on the first day of May, eighteen hundred and forty-two, and the other on the first day of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may, hereafter accrue: *Provided*, That the legislature of said state shall first pass an act, declaring their acceptance of said relinquishment, and also embracing a provision, to be unalterable without the consent of congress, that the whole of said two per cent. fund shall be faithfully applied, under the direction of the state of Alabama, to the connection, by some means of internal improvement, of the navigable waters of the bay of Mobile with the Tennessee river, and to the construction of a continuous line of internal improvements from a point on the Chattahoochie river, opposite West Point, in Georgia, across the state of Alabama, in a direction to Jackson, in the State of Mississippi.

APPROVED, September 4th, 1841.

AN ACT

TO SECURE HOMESTEADS TO ACTUAL SETTLERS ON THE PUBLIC DOMAIN.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States government or given aid and comfort to its enemies, shall, from and after the first day of January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: *Provided,* That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2. *And be it further enacted,* That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one or more years of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the government of the United States, or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *Provided however,* That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry—or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death—shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: *And provided, further,* That in case of the death of both father and mother, leaving an infant child, or children under twenty-one years of age, the right and fee shall enure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the state in which such children for the time being have their domicil, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SEC. 3. *And be it further enacted,* That the register of the land office shall note all such applications on the tract books and plats of his office, and keep a register of all such entries,

and make return thereof to the General Land Office, together with the proof upon which they have been founded.

SEC. 4. *And be it further enacted*, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

SEC. 5. *And be it further enacted*, That, if at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event, the land so entered shall revert to the government.

SEC. 6. *And be it further enacted*, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the commissioner of the general land office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one-half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: *Provided*, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing pre-emption rights: *And provided further*, That all persons who may have filed their applications for a pre-emption right prior to the passage of this act shall be entitled to all privileges of this act: *Provided further*, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years.

SEC. 7. *And be it further enacted*, That the fifth section of the act entitled "An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved the third

of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits, required or authorized by this act.

SEC. 8. *And be it further enacted,* That nothing in this act shall be so construed as to prevent any person who has availed him or herself of the benefits of the first section of this act from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting pre-emption rights.

APPROVED, May 20, 1862.

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ABSTRACT

OF THE LAWS OF THE UNITED STATES IN RELATION TO THE NATURALIZATION OF ALIENS.

- Sec. 1.** Who may be admitted as citizens.
2. Form of declaration two years prior to the admission, and before whom made.
 3. Certain persons exempted from preceding conditions.
 4. Admission of minors who arrive in the United States when not over eighteen years of age.
 5. When widow and children of deceased alien deemed citizens.
 6. Oath upon admission.
 7. Proof of character and residence, before admission, and by whom to be made.
 8. Alien to renounce hereditary title—record thereof—to be citizen of country at peace with the United States.
 9. As to aliens residing in the United States in 1812.
 10. As to aliens residing in the United States between 1802 and 1812.
 11. As to aliens residing in the United States between 1798 and 1802, what proof of residence required, and how set forth in record, to render admission valid.
 12. What children of aliens, &c., deemed citizens. Proscribed persons not to be admitted.
 13. As to aliens residing in the United States prior to 1795.
 14. What state courts may admit aliens.
 15. Five years' residence required before admission of alien who arrives in the United States after 1815.

SECTION 1. Any alien being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise :

Sec. 2. *First:* That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit

court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, two years at least before his admission, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof such alien may, at the time, be a citizen or subject.

SEC. 3. From this condition are exempted, any alien being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, seventeen hundred and ninety-eight, and the fourteenth day of April, eighteen hundred and two, and who has continued to reside within the same.

SEC. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to be a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three of his minority, be admitted a citizen of the United States, without having made the declaration required in the second section, three years previous to his admission: but such alien shall make the declaration required therein, at the time of his or her admission; and shall further declare on oath, and prove to the satisfaction of the court, that for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.

SEC. 5. When any alien shall have complied with the condition specified in section second, and who shall have pursued the directions prescribed in the second section of the act of April fourteen, eighteen hundred and two, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

SEC. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign

prince, potentate, state or sovereignty, whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject: which proceedings shall be recorded by the clerk of the court.

SEC. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held one year at least, and it shall further appear to their satisfaction that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence.

SEC. 8. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state, from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien, who shall be a native citizen, denizen or subject of any country, state or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States.

SEC. 9. But persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration according to law, of their intention to become citizens of the United States; or who, by the existing laws of the United States, were, on that day, entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies; at the times, and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, That nothing herein contained, shall be taken or construed to interfere with, or prevent the apprehension and removal agreeably to law of any alien enemy, at any time previous to the actual naturalization of such alien.

SEC. 10. Any alien being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*,

That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses; and such continued residence within the limits and jurisdiction of the United States, when satisfactorily proved, and the place or places, where the applicant has resided, for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court, admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 11. Nothing in the foregoing section, ten, contained, shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States, according to section three. Whenever any person without a certificate of such declaration of intention as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as afore-

said, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

SEC. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passage of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed. Children of persons naturalized before the fourteenth of April, eighteen hundred and two, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, eighteen hundred and two, to be considered as citizens of the United States.

SEC. 13. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness

of the same; and when the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making, in the court, an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceeding, required in this provision to be performed in the court, shall be recorded by the clerk thereof.

SEC. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court, within the meaning of the naturalization act; and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

SEC. 15. No person who shall have arrived in the United States, after February the seventeenth, one thousand eight hundred and fifteen, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States.

ACT OF CONGRESS

TO AMEND THE ACTS REGULATING THE FEES, COSTS, AND OTHER JUDICIAL
EXPENSES OF THE GOVERNMENT IN THE STATES, TERRITORIES,
AND DISTRICT OF COLUMBIA, AND FOR OTHER PURPOSES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That hereafter, before the accounts of the United States marshals, district attorneys and clerks, are presented to the accounting officers of the Treasury Department for settlement, they shall be examined and certified to by the district judge of the United States in the district in which the officers presenting the accounts officiate, whether in the states or territories, and the same shall be subject to revision upon their merits by said accounting officer, as in case of other public accounts: *Provided, however,* That no accounts of fees or costs paid to any witness or juror, upon the order of any judge or commissioner, shall be so re-examined as to charge any marshal for an enormous taxation of such fees or costs.

SEC. 2. *And be it further enacted,* That the accounts of the commissioners of the United States circuit court shall be examined and certified to by the district judge of the district in which they are appointed, previous to their presentation to, or revision by, the accounting officers of the Treasury Department.

SEC. 3. *And be it further enacted,* That in no case shall the

fees of more than four witnesses be taxed against the United States in the examination of criminal cases before the commissioners of the United States circuit courts, unless their materiality and importance shall first be approved and certified to by the United States district attorney for the district in which the examination shall take place, subject to revision, as in other cases.

SEC. 4. *And be it further enacted*, That in all these cases before mentioned, an appeal shall lie from the decision of the accounting officers to the secretary of the Interior.

SEC. 5. *And be it further enacted*, That the judges of the supreme court in each of the territories, or a majority of them, shall, when assembled at their respective seats of government, fix and appoint the several times and places of holding the several courts in their respective districts, and limit the duration of the terms thereof: *Provided*, That the said courts shall not be held at more than three places in any one territory: *And provided, further*, That the judge or judges holding such courts shall adjourn the same, without day, at any time before the expiration of such terms, whenever, in his or their opinion, the further continuance thereof is not necessary.

SEC. 6. *And be it further enacted*, That all cost and fees for services rendered by the clerks of the several courts in the district of Columbia, chargeable to others than the United States, shall be payable immediately after the services are performed, and shall be collected by such rules and regulations, not incompatible with law, as may be prescribed by the courts in which such services are rendered, but shall in no case, be paid by the United States.

SEC. 7. *And be it further enacted*, That the several circuit and district courts of the United States, the district courts of the territories, and the criminal court of the district of Columbia, shall have the power to discharge the grand juries of the respective courts whenever they shall be of opinion that the public interests will not be subserved by a further continuance of the session of said grand jury.

SEC. 8. *And be it further enacted*, That no officer of the United States, including the bailiffs, guards, or deputies of the United States marshals, whether in the states, territories, or district of Columbia, shall be entitled to witness fees, either before a court, or commissioners where he is officiating.

SEC. 9. *And be it further enacted*, That the United States shall hereafter be liable to the justices and constables of the county of Washington, in the district of Columbia, for their fees, and services in cases of felony only, and so much of the fifteenth section of the act of May seventeenth, eighteen hundred

and forty-eight, entitled, "An act to continue, alter, and amend the charter of the city of Washington," as provided otherwise, is hereby repealed; said fees shall be paid by the United States marshal, upon the approval of the judge of the criminal court of the district of Columbia, subject to the revision by the accounting officers of the treasury, and to appeal to the secretary of the interior.

SEC. 10. *And be it further enacted,* That it shall be the duty of each of the judges of the supreme court of the respective territories of the United States to designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and to designate and retain but one such clerk where more than one is already appointed, and only such district clerks shall be entitled to a compensation from the United States except for fees taxable to the United States.

SEC. 11. *And be it further enacted,* That so much of the third section of the act of February twenty-sixth, eighteen hundred and fifty-three, entitled "An act to regulate the fees and costs to be allowed to clerks, marshals and attorneys of the circuit and district courts of the United States, and for other purposes," as requires "that when the compensation of any clerk shall be less than five hundred dollars per annum, the difference ascertained and allowed by the proper accounting officers of the treasury shall be paid to him therefrom," is hereby repealed.

SEC. 12. *And be it further enacted,* That all accounts of the United States district attorneys for services rendered in cases instituted in the United States or state courts, when the United States is a party in interest, but not of record; or in cases instituted against the officers of the United States or their deputies or duly appointed agents, for acts committed or omitted or suffered by them in the lawful discharge of their duties, shall be audited and allowed as in other cases, assimilating the fees, as near as may be, to those provided by said act of February twenty-sixth, eighteen hundred and fifty-three, for like or similar services.

SEC. 13. *And be it further enacted,* That no marshal or deputy marshal, of any of the courts of the United States, shall hold or exercise the duties of commissioner of any of said courts, nor receive compensation therefor.

SEC. 14. *And be it further enacted,* That whenever from any cause, it may be impossible for the district attorney to attend at court, it shall be his duty to see that a meet and proper person, learned in the law, residing as near the place where the court is held as possible, does attend to such business as

may appertain to the duties of his office, and in all such cases, the fees and charges to be paid shall be only such as the district attorney would have been authorized by law to charge had he personally attended and performed the service: *Provided, however,* That before any substitution is sanctioned, or payment made, the necessity therefor shall be shown to the satisfaction of the secretary of the interior.

SEC. 2. *And be it further enacted,* That all provisions of law inconsistent with this act are hereby repealed.

APPROVED, August 16th, 1856.

AN ACT

REQUIRING AN OATH OF ALLEGIANCE, AND TO SUPPORT THE CONSTITUTION OF THE UNITED STATES, TO BE ADMINISTERED TO CERTAIN PERSONS IN THE CIVIL SERVICE OF THE UNITED STATES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That it shall be the duty of the heads of the several departments to cause to be administered to each and every officer, clerk, or employé, now in their respective departments, or in any way connected therewith, or who shall hereafter in any way become connected therewith, the following oath, viz: "I do solemnly swear (or affirm, as the case may be,) that I will support, protect, and defend the constitution and government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution, or law of any state convention or legislature to the contrary notwithstanding; and, further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law. So help me God." And that each and every such civil officer and employé, in the department aforesaid, or in any way connected therewith, in the service or employment of the United States, who shall refuse to take the oath or affirmation herein provided, shall be immediately dismissed and discharged from such service or employment.

SEC. 2. *And be it further enacted,* That the oath or affirmation, herein provided for in the first section of this act, may be taken before any justice of the peace, or notary public, or other person who is legally authorized to administer an oath in the state or district where the same may be administered. And that any violation of such oath, by any person or persons taking the same, shall subject the offender to all the pains and penalties of wilful and corrupt perjury, who shall be liable to be indicted and prosecuted to conviction for any such offence before any court having jurisdiction thereof: *And provided further,* That such offender shall be forthwith discharged from such service or employment.

APPROVED, August 6, 1861.

AN ACT

TO PRESCRIBE AN OATH OF OFFICE, AND FOR OTHER PURPOSES,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That hereafter every person elected or appointed to any office of honor or profit under the government of the United States, either in the civil, military or naval departments of the public service, excepting the president of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe to the following oath, or affirmation: "I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof: that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto: that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States: that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto. And I further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the constitution of the United States against all enemies foreign and

domestic, that I will bear true faith and allegiance to the same : that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God ;” which said oath so taken and signed, shall be preserved among the files of the court, house of congress, or department to which the said office may appertain. And any person who shall falsely take the said oath shall be guilty of perjury, and on conviction, in addition to the penalties now prescribed for that offence, shall be deprived of his office and rendered incapable forever after of holding any office or place under the United States.

APPROVED, July 2, 1862.

AN ACT

IN RELATION TO COURTS, AND THE HOLDING OF THE TERMS THEREOF IN THE SEVERAL TERRITORIES IN THE UNITED STATES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the judges of the supreme court of each territory of the United States are hereby authorized to hold court within their respective districts in the counties wherein, by the laws of said territories, courts have been, or may be established, for the purpose of hearing or determining all matters and causes except those in which the United States is a party : *Provided,* That the expenses thereof shall be paid by the territories, or by the counties in which said courts may be held, and the United States shall, in no case, be chargeable therewith.

APPROVED, June 14th, 1858.

AN ACT

TO SECURE FREEDOM TO ALL PERSONS WITHIN THE TERRITORIES OF THE UNITED STATES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That from and after the passage of this act, there shall be neither slavery nor involuntary servitude in any of the terri-

tories of the United States now existing, or which may at any time hereafter be formed or acquired by the United States, otherwise than in the punishment of crimes whereof the party shall have been duly convicted.

APPROVED, June 19th, 1862.

AN ACT

IN RELATION TO THE COMPETENCY OF WITNESSES, AND FOR OTHER PURPOSES.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the laws of the state in which the court shall be held, shall be the rules of decision as to the competency of witnesses in the courts of the United States, in trials at common law, in equity, and admiralty.

SEC. 2. *And be it further enacted,* That so much of section twenty-nine of an act entitled "An act to establish [the] judicial courts of the United States," approved September twenty-fourth, seventeen hundred and eighty-nine, as requires, in cases punished with death, twelve petit jurors to be summoned from the county where the offence was committed, be, and the same is hereby repealed.

APPROVED, July 16, 1862.

AN ACT

TO DEFINE THE PAY AND EMOLUMENTS OF CERTAIN OFFICERS OF THE ARMY, AND FOR OTHER PURPOSES.

* * * * *

SECTION 21. *And be it further enacted,* That any alien of the age of twenty-one years and upwards, who has enlisted, or who

shall enlist in the armies of the United States, either the regular or volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

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APPROVED, July 17, 1862.

STATUTES

OF THE

TERRITORY OF IDAHO.

TITLE I.

AN ACT to regulate proceedings in Civil Cases in the Courts of Justice of the Territory of Idaho.

CHAPTER I.

OF THE FORM OF CIVIL ACTIONS, AND OF THE PARTIES THERETO.

- SEC. 1.** Only one form of action.
- 2.** Parties designated.
 - 3.** Question of fact.
 - 4.** Action, in whose name.
 - 5.** Set-off when not prejudiced.
 - 6.** Action by executor.
 - 7.** When married woman is party, exceptions.
 - 9.** Infant and guardian.
 - 11.** Injury to child, etc.
 - 12.** Plaintiff, who may be joined.
 - 13.** Defendant, who may be made.

SEC. 14. Parties. who to be joined.

15. Separately liable, may be joined.

16. Death of party, or transfer of interest.

17. Controversy, when court to determine.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. There shall be in this territory but one form of civil action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be the same at law and in equity.

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

SEC. 3. When a question of fact, not put in issue by the pleadings, is to be tried by the jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

SEC. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act; but in suits brought by the assignee of an account, unliquidated demand, or thing in action not arising out of contract, the assignor shall not be a witness on behalf of the plaintiff.

SEC. 5. In the case of an assignment of the thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note, or bill of exchange, transferred in good faith, and upon good consideration, before due.

SEC. 6. An executor or administrator, trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section, shall be construed to include a person with whom, or in whose name, a contract is made for the benefit of another.

SEC. 7. When a married woman is a party, her husband shall be joined with her; except, that when the action concerns her separate property, she may sue alone; when the action is between herself and her husband, she may sue or be sued alone.

SEC. 8. If a husband and wife are sued together, the wife may defend for her own right.

SEC. 9. When an infant is a party, he shall appear by

guardian, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or a probate judge.

SEC. 10. The guardian shall be appointed as follows: First. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or, if under that age, upon the application of a relative or friend of the infant. Second. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 11. A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

SEC. 12. All persons having an interest in the subject of the action, and obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

SEC. 13. Any person may be made a defendant, who has, or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

SEC. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs, or defendants; but if the consent of any one, who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all into court, one or more may sue or defend for the benefit of all.

SEC. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

SEC. 16. An action shall not abate by the death, or other disability of the party or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, or other disability, of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

SEC. 17. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

TITLE II.

PLACE OF TRIAL OF CIVIL ACTIONS.

SEC. 18. Where subject matter is situated.

19. Where cause of action arose.

20. Where parties reside.

24. Changing place of trial.

SEC. 18. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this act: First. For the recovery of real property, or mining claims, or of an estate or interest therein, or for the determination, in any form, of such right or interest, or for injuries to real property. Second. For the partition of real property. Third. For the foreclosure of a mortgage of real property.

SEC. 19. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial: First. For the recovery of a penalty or forfeiture imposed by statute; except, that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or other stream, and opposite to the place where the offense was committed. Second. Against a public officer, or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

SEC. 20. In all other cases, the action shall be tried in the county in which the parties, or some of them, reside at the commencement of the action; or, if none of the parties reside

in the territory, the same may be tried in any county which the plaintiff may designate in his complaint, subject, however, to the power of the court to change the place of trial, as provided in this act.

SEC. 21. The court may, on motion, change the place of trial in the following cases: First. When the county designated in the complaint is not the proper county. Second. When there is reason to believe that an impartial trial cannot be had therein. Third. When the convenience of witnesses, and the ends of justice, would be promoted by the change. Fourth. When, from any cause, the judge is disqualified from acting in the action.

TITLE III.

MANNER OF COMMENCING ACTIONS.

SEC. 22. How commenced in certain courts.

23. Complaint, how indorsed.

24. Form of summons.

25. Answer, when to be made.

26. Notice to be inserted in summons.

27. Notice in action affecting real property.

28. Summons, by whom served.

29. How served.

30. Service by publication.

31. Proceedings where service is made only on some of several defendants.

33. Proof of service.

35. Jurisdiction, when it attaches.

SEC. 22. Civil actions in the district court, and the probate courts, shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuing of a summons thereon: *Provided*, That after the filing of the complaint, a defendant in the action may appear, answer or demur, whether the summons has been issued or not, and such appearance, answer or demurer, shall be deemed a waiver of summons.

SEC. 23. The clerk shall indorse on the complaint the day, month and year the same is filed; and at any time within one

year after the filing of the same, the plaintiff may issue, or cause to be issued, a summons thereon. The summons shall be issued and signed by the clerk or attorney of the plaintiff, and directed to the defendant, and when issued by the clerk, to be issued under the seal of the court.

SEC. 24. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint, within the time mentioned in the next section, after the service of summons, exclusive of the day of service, or that judgment by default will be taken against him, according to the prayer of the complaint, briefly stating the sum of money or other relief demanded in the complaint; and the clerk shall also indorse on the summons the names of the plaintiff's attorneys.

SEC. 25. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First. If the defendant is served within the county in which the action is brought, twenty days. Second. If the defendant is served out of the county, but in the district in which the action is brought, thirty days. Third. In all other cases, forty days.

SEC. 26. There shall also be inserted in the summons a notice, in substance as follows: First. In an action arising on contract for the recovery only of money or damages, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint. Second. In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

SEC. 27. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, may file with the recorder of the county in which the property is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby. From the time of filing, only, shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

SEC. 28. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or appointed by a judge of the court in which the action is brought. When the summons is served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer, to the office of the clerk where the complaint is filed. When the summons is served by any other person, as before provided, it

shall be returned to the office of the clerk, with the affidavit of such person, of its service.

SEC. 29. The summons shall be served by delivering a copy thereof, as follows: First. If the suit be against a corporation, to the president or other head of the corporation, secretary, cashier, or managing agent thereof. Second. If against a minor, under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian; or if there be none within the territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed. Third. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian. Fourth. In all other cases, to the defendant personally; or if he be not found, to some white person of the family, above the age of fourteen years, at the dwelling house or usual place of abode of the defendant, and explaining to such person the contents of such summons.

SEC. 30. When the person on whom the service is to be made, resides out of the territory, or has departed from the territory, or cannot after due diligence be found within the territory, or conceals himself to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court, or a judge thereof, or a probate judge, and it shall, in like manner, appear that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by publication of the summons.

SEC. 31. The order shall direct the publication to be made in a newspaper to be designated, as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week: *Provided*, That the publication against a defendant, being or residing either in the states of California or Oregon, or territories of Utah or Washington, shall not be less than one month; and against a defendant residing out of this territory, or absent therefrom, or out of either of the states of California or Oregon, or territories of Utah or Washington, shall not be less than three months. In case of publication, where the residence of a non-resident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint, out of the territory, shall be equivalent to publication

and deposit in the post office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed by the order for publication. In actions upon contracts for the direct payment of money, the court, in its discretion, may, instead of ordering publication, or may, after publication, appoint an attorney to appear for the non-resident, absent or concealed defendant, and conduct the proceedings on his part.

SEC. 32. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First. If the action be against the defendants jointly indebted upon a contract, he may proceed against the defendant served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendant served: or Second. If the action be against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were only defendants.

SEC. 33. Proof of the service of the summons shall be as follows: First. If served by the sheriff or his deputy, the affidavit or certificate of such sheriff or deputy; or, Second. If by any other person, his affidavit thereof; or, Third. In case of publication, the affidavit of the printer, or his foreman, or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or, Fourth. The written admission of the defendant.

SEC. 34. In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of the service.

SEC. 35. From the time of the service of the summons in a civil action, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him.

TITLE IV.

PLEADINGS.

- Sec. 36.** Pleadings defined.
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66. Material allegations.
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68. Amendment of pleadings and time for answering.
69. Plaintiff ignorant of defendant's name.
70. Pleadings, how construed.
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Sec. 36. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

Sec. 37. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

Sec. 38. The only pleadings on the part of the plaintiff shall be the complaint, demurrer, or replication to the defendant's answer, and the only pleadings on the part of the defendant shall be a demurrer to the complaint, or a demurrer to the

replication, or an answer to the complaint. The demurrer or answer of the defendant, and the demurrer or replication of the plaintiff, shall be filed with the clerk, and a copy thereof served on the adverse party, or his attorney.

SEC. 39. The complaint shall contain: First. The title of the action, specifying the name of the court and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant, and shall be addressed to a court of law or equity, as the case may be. Second. A statement of the facts constituting the cause of action, in ordinary and concise language. Third. A demand of the relief which the plaintiff claims. If the recovery of money, or damages, be demanded, the amount thereof shall be stated.

SEC. 40. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either: First. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or, Second. That the plaintiff has not the legal capacity to sue; or, Third. That there is another action pending between the same parties for the same cause; or, Fourth. That there is a defect or misjoinder of parties, plaintiff or defendant; or, Fifth. That several causes of action have been improperly united; or, Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or, Seventh. That the complaint is ambiguous, unintelligible, or uncertain; or, Eighth. That the action has not been commenced within the time limited by law.

SEC. 41. The demurrer shall distinctly specify the ground upon which any of the objections to the complaint are taken. Unless it do so, it may be disregarded.

SEC. 42. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein and answer the residue, or may demur and answer at the same time.

SEC. 43. If the complaint be amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney; the defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

SEC. 44. When any of the matters enumerated in section forty, do not appear upon the face of the complaint, the objection may be taken by answer.

SEC. 45. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 46. The answer of the defendant shall contain: First. If the complaint be verified, a specific denial to each allegation of the complaint controverted by the defendant, or a denial thereof, according to his information and belief; if the complaint be not verified, then a general denial to each of such allegations, but a general denial shall only put in issue the material and express allegations of the complaint. Second. A statement of any new matter or counter-claim, constituting a defense, in ordinary and concise language. When the answer contains new matter, constituting a defense, the plaintiff may, within the same length of time allowed for answering, and subject to the same rules, reply to such new matter; and if he fail to do so, such new matter shall be taken as true, and deemed proved at the trial. If new matter of set-off and counter-claim be set up in the answer, the reply may contain matter of set-off and counter-claim, not embraced in the complaint. All new matter set up in the replication, shall be deemed denied by the defendant.

SEC. 47. The counter-claim mentioned in the last section, shall be one existing in favor of the defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First. A cause of action arising out of the transaction set forth in the complaint or answer, as the foundation of the plaintiff's claim, or defendant's defense, connected with the subject of the action. Second. In an action arising upon contract, any other cause of action arising also upon contract, and existing at the commencement of the action.

SEC. 48. When cross demands have existed between persons, under such circumstances, that if one had brought an action against the other, a counter-claim could have been set up, neither shall be deprived of the benefit thereof, by the assignment or death of the other; but the two demands shall be deemed compensated, so far as they equal each other.

SEC. 49. The defendant may set forth by answer as many defenses and counter-claims as he may have. They shall each be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

SEC. 50. When the answer contains new matter, the plaintiff may, within the number of days by which the defendant

is, by the summons, required to answer, said days to be computed from the time of the service on the plaintiff, of such answer, demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may, also, within the same time, demur to one or more defenses, set up in the answer, and the defendant may in like manner demur to the plaintiff's replication. Sham and irrelevant answers, replications and defenses, and so much of any answer or replication as may be irrelevant, redundant or immaterial, may be stricken out on motion, and upon such terms as the court in its discretion may impose.

SEC. 51. Every pleading shall be subscribed by the party or his attorney, and when the complaint is verified by affidavit, the answer and replication shall be verified also, except as provided in the next section.

SEC. 52. The verification of the answer or replication, required in the last section, may be omitted when an admission of the truth of complaint or answer might subject the party to prosecution for felony or misdemeanor.

SEC. 53. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same be verified.

SEC. 54. When the defense to an action is founded upon a written instrument, and a copy thereof is contained in the answer, or a copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the replication denying the same be verified.

SEC. 55. In all cases of the verification of a pleading, the affidavit of the party shall state the same is true of his own knowledge, except as to matters which are therein stated on his information or belief, and as to those matters, that he believes them to be true. And where a pleading is verified, it shall be by the affidavit of the party, unless he be absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney, or other person verifying the same. When the pleading is verified by the attorney, or any other person except the party, he shall set forth in the affidavit the reasons why it is not made by the party. When a corporation is a party, the verification may be made by an officer thereof; or when the territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts, except that in actions prosecuted by the attorney general

or district attorney, in behalf of the territory, the pleadings need not, in any case, be verified.

SEC. 56. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged, but he shall deliver to the adverse party, within five days after a demand thereof, in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or a judge thereof, or a probate judge, may order a further account, when the one delivered is too general, or is defective in any particular.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court, on motion of any person aggrieved thereby.

SEC. 58. In an action for the recovery of real property, such property shall be described, with its metes and bounds, in the complaint.

SEC. 59. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

SEC. 60. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

SEC. 61. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

SEC. 62. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

SEC. 63. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damage; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they arise out of: First. Contracts, express or implied; or, Second. Claims to recover specified real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same; or, Third. Claims to recover specific personal property, with or without damages for the withholding thereof; or, Fourth. Claims against a trustee by virtue of a contract or by operation of law; or, Fifth. Injuries to character; or, Sixth. Injuries to person; or, Seventh. Injuries to property. But the causes of action so united, shall all belong to one only of these classes, and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated: *Provided, however,* That an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person.

SEC. 65. Every material allegation of the complaint or answer, when it is verified, not specifically controverted by the answer or replication, shall, for the purpose of the action, be taken as true. The allegation of new matter in the replication, shall, on trial, be deemed controverted by the adverse party.

SEC. 66. A material allegation in a pleading, is one essential to the claim, or defense, and which could not be stricken from the pleading without leaving it insufficient.

SEC. 67. After demurrer, and before the trial of issue on demurrer, either party may, within ten days, amend any pleading demurred to, of course, and without costs, filing the same, as amended, and serving a copy thereof upon the adverse party or his attorney, who shall have ten days to answer, reply or demur thereto; but a party shall not so amend more than once. When a demurrer to a complaint or answer is overruled, and there is no answer or replication filed, the court may, upon such terms as shall be just, and upon payment of costs, allow an answer or replication to be filed. If a demurrer to the replication be overruled, the facts alleged in the replication shall still be considered as denied.

SEC. 68. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for an answer or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon

such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may, upon like terms, allow an answer to be made after the time limited by this act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect, when, from any cause, the summons and a copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant, or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

SEC. 69. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and, when his true name is discovered, the pleading or proceeding may be amended accordingly.

SEC. 70. In the construction of a pleading for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

SEC. 71. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect.

TITLE V.

CHAPTER II.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS, ARRESTS AND BAIL.

SEC. 72. Arrest, when may be made.

74. Order for, how obtained.

76. Plaintiff to give undertaking.

77. When order may be made, form.

78. Order, duty of sheriff and how executed.

80. Defendant how discharged.

81. Bail, how given.

82. Surrender in discharge of.

- Sec. 83.** May arrest defendant.
84. Judgment against.
85. How exonerated.
86. Proceedings after arrest.
87. Notice of justification of bail.
88. Qualifications of bail.
89. Bail how to justify.
90. Allowance of bail.
91. Deposit in lieu of bail.
92. Disposition of deposit.
93. Bail after deposit.
94. Application of deposit after judgment.
95. Liability of sheriff.
96. Judgment against sheriff.
97. Vacating order of arrest.
98. Reduction of bail.

Sec. 72. No person shall be arrested in a civil action, except as prescribed by this act.

Sec. 73. The defendant may be arrested, as hereinafter prescribed, in the following cases, arising after the passage of this act: First. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors, or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another. Second. In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such; or any other person in a fiduciary capacity, or for misconduct or neglect in office, or in a professional employment. Third. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff. Fourth. When the defendant has been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought. Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; but no female shall be arrested in any action, except for an injury to person, character or property.

Sec. 74. An order for the arrest of the defendant shall be

obtained from a judge of the court in which the action is brought, or from a probate judge.

SEC. 75. The order may be made whenever it shall appear to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section seventy-three. The affidavit shall be either positive or upon information and belief; and, when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the county.

SEC. 76. Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded the defendant, and all damages which he may sustain by reason of the arrest—not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars. Each of the sureties shall annex to the undertaking an affidavit that he is a resident within the territory, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

SEC. 77. The order may be made to accompany the summons, or any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order, at a time therein mentioned, to the clerk of the court in which the action is pending.

SEC. 78. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and, also, if desired, a copy of the order of arrest.

SEC. 79. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law.

SEC. 80. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.

SEC. 81. The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect

that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

SEC. 82. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the sheriff of the county where he was arrested.

SEC. 83. For the purpose of surrendering the defendant, the bail at any time or place before they are finally charged, may themselves arrest him; or by a written authority, indorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated; provided such arrest, delivery, or surrender, take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender, be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of judgment within ten days thereafter.

SEC. 84. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

SEC. 85. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

SEC. 86. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon; together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

SEC. 87. Within five days after the receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying

the place of residence and occupation of the latter), before a judge of the court, or probate judge, or county clerk, at a specified time and place; the time to be not less than five, nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking. But no attorney or counsellor at law, sheriff, clerk of any court, or other officer of any court shall be permitted to become bail in any action.

SEC. 88. The qualifications of bail shall be as follows: First. Each of them shall be a resident within the county. Second. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above his debts and liabilities, exclusive of property exempt from execution; but the judge, or county clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

SEC. 89. For the purpose of justification, each of the bail shall attend before the judge, or county clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or county clerk, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

SEC. 90. If the judge, or clerk, find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

SEC. 91. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned. In case the amount of the bail be reduced, as provided in this act, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

SEC. 92. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same two certificates of such payment—the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquency.

SEC. 93. If money be deposited, as provided in the last two sections, bail may be given, and may justify upon notice,

at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

SEC. 94. Where money shall have been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

SEC. 95. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, at any time before judgment.

SEC. 96. If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

SEC. 97. A defendant arrested may, at any time before justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

SEC. 98. If upon any such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or, if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

CHAPTER III.

CLAIMS FOR DELIVERY OF PERSONAL PROPERTY.

SEC. 99. When claim may be made.

100. Affidavit to obtain order for delivery.

102. Proceedings on.

103. Sureties excepting to.

104. Defendant may require return.

Sec. 105. Justification of defendant's securities.

106. Qualification of sureties.

107. Property concealed.

108. Sheriff to keep property.

109. Proceedings when property claimed by third party.

110. Order and affidavit to be filed.

SEC. 99. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided in this act.

SEC. 100. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second. That the property is wrongfully detained by the defendant. Third. The alleged cause of the detention thereof, according to his best knowledge, information and belief. Fourth. That the same has not been taken for a tax, assessment or fine, pursuant to a statute; or seized under an execution, or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure. Fifth. The actual value of the property.

SEC. 101. The plaintiff or his attorney may thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

SEC. 102. Upon a receipt of the affidavit and notice, with a written understanding executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

SEC. 103. The defendant may, within two days after service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify, on notice, in like manner as upon bail or arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 104. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and nine.

SEC. 105. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before a judge or county clerk, in the same manner as upon bail on arrest; and upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

SEC. 106. The qualification of sureties and their justification shall be such as are prescribed by this act in respect to bail upon an order of arrest.

SEC. 107. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of the county.

SEC. 108. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his

lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 109. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or right of possession thereof, stating the grounds of such title, or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim, by an undertaking, by two sufficient sureties, accompanied by their affidavits that they are worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution; and no claim to such property, by any other person than the defendant, or his agent, shall be valid against the sheriff, unless so made.

SEC. 110. The sheriff shall file the notice, undertaking and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER IV.

INJUNCTIONS.

SEC. 111. Defined.

112. In what cases may be and when granted.

114. After answer.

115. Undertaking on.

116. Order nisi for injunction.

117. Injunction to suspend business of corporation.

118. Motion to dissolve or modify.

SEC. 111. An injunction is a writ, or order, requiring a person to refrain from a particular act. The order, or writ, may be granted by the court in which the action is brought, or by the judge thereof, or by a probate judge; and when made by a judge, may be enforced as the order of the court.

SEC. 112. An injunction may be granted in the following cases: First. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or

continuance of the act complained of, either for a limited period or perpetually. Second. When it shall appear by the complaint or affidavit, that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff. Third. When it shall appear during the litigation, that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

SEC. 113. The injunction may be granted at the time of issuing the summons upon the complaint; and, at any time afterwards, before judgment, upon affidavits. The complaint, in the one case, and the affidavits in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint, unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint, or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that, as to those matters, he believes it to be true. When granted on the complaint, a copy of the complaint, and verification attached, shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

SEC. 114. An injunction shall not be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but, in such case, the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

SEC. 115. On granting an injunction, the court or judge shall require, except where the people of the territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

SEC. 116. If the court or judge deem it proper that the defendant, or any of several defendants, shall be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

SEC. 117. An injunction to suspend the general and ordinary business of a corporation, shall not be granted, except by

the court; nor shall it be granted without due notice of the application therefor to the proper officers of the corporation, except when the people of this territory are a party to the proceedings.

Sec. 118. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on the part of the defendant, with or without the answer. If the application be made upon affidavit on the part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

Sec. 119. If, upon such application, it satisfactorily appear that there is not sufficient ground for the injunction, it shall be dissolved; or if it appear that the extent of the injunction is too great, it shall be modified.

CHAPTER V.

ATTACHMENT.

- Sec. 120. At what time may issue.
121. Affidavit, what to show.
122. Undertaking of Plaintiff.
123. Writ, requirement of, several may issue.
124. What property may be attached.
125. How writ shall be executed.
126. Property in hands of third party, how attached.
127. Liability of third party.
128. Examination of third party.
129. Return of sheriff.
130. Perishable property to be sold.
131. Property claimed by third party.
132. Judgment, how satisfied, notice of sale.
134. Proceedings when execution returned unsatisfied.
135. Proceedings when defendant recovers judgment.
136. Discharge of attachment, when made.
137. Undertaking of defendant.
138. Plea in abatement.
139. What to prove.
140. Liability for issuing attachment.
141. Return of sheriff.

SEC. 120. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, in the following cases: First. In an action upon a contract, express or implied, for the direct payment of money, which contract is made or is payable in this territory, and is not secured by a mortgage, lein or pledge upon real or personal property; or if so secured, that such security has been rendered nugatory by the act of the defendant. Second. In an action upon a contract, express or implied, against a defendant not residing in this territory.

SEC. 121. The clerk of the court shall issue the writ of attachment upon receiving an affidavit by, or on behalf of the plaintiff, which shall be filed, showing; First. That the defendant is indebted to the plaintiff, specifying the amount of such indebtedness over and above all legal set-offs and counter-claims, upon a contract, express or implied, for the direct payment of money, and that such contract was made or is payable in this territory, and that the payment of the same has not been secured by any mortgage, lein or pledge upon any real or personal property; or if so secured, that such security has been rendered nugatory by the act of the defendant; or, Second. That the defendant is indebted to the plaintiff, (specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs and counter-claims,) and that the defendant is a non-resident of the territory; and that the sum for which the attachment is asked, is an actual *bona fide*, existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor or creditors of the defendant.

SEC. 122. Before issuing the writ, the clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than the amount claimed by the plaintiff, and not less, in any case, than two hundred dollars, with sufficient sureties to the effect, that if the defendant recover judgment, or if the attachment should be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

SEC. 123. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's de-

mand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, to take such undertaking. Several writs may be issued at the same time, to sheriffs of different counties.

SEC. 124. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interests and profits thereon, and all debts due such defendant, and all other property in this territory of such defendant, not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

SEC. 125. The sheriff to whom the writ is directed and delivered shall execute the same without delay; and if the undertaking mentioned in section one hundred and twenty-three be not given, as follows: First. Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the recorder of the county. Second. Personal property, capable of manual delivery, shall be attached by taking it into custody. Third. Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ and a notice stating the stock or interest of the defendant is attached in pursuance of such writ. Fourth. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts or having in his possession or under his control such credits or other personal property, a copy of the writ and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such writ.

SEC. 126. Upon receiving information in writing from the plaintiff or his attorney that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

SEC. 127. All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the

time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be (unless such property be delivered up or transferred, or such debts be paid to the sheriff,) liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 128. Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property, capable of manual delivery, to be delivered to the sheriff, on such terms as may be just—having reference to any liens thereon or claims against the same—and a memorandum to be given of all other personal property containing the amount and description thereof.

SEC. 129. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return, as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each; and if such memorandum is refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

SEC. 130. If any of the property attached be perishable, the sheriff shall sell the same, in the manner in which such property is sold on execution. The proceeds and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment, recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

SEC. 131. The sheriff may deliver any of the property attached to the defendant or to any other person claiming it, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, engaging to re-deliver it or pay the value thereof to the sheriff, to whom execution upon a

judgment obtained by the plaintiff in that action may be issued. If an action be brought upon such undertaking against the principal or his sureties, it shall be a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

SEC. 132. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant, as herein before provided, or subjected to execution on another judgment recovered previous to issuing the attachment, if it be sufficient for that purpose: First. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment. Second. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

SEC. 133. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 134. If the execution be returned unsatisfied, in whole or in part, plaintiff may prosecute any undertaking given pursuant to sections one hundred and twenty-three and one hundred and thirty-seven, or he may proceed as in other cases upon the return of an execution.

SEC. 135. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached, remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged, and the property released therefrom.

SEC. 136. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge

thereof, or to a probate judge, for an order to discharge the same, upon the execution of the undertaking mentioned in the next section; and if the application be granted, all the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment, and delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff.

SEC. 137. Upon such application the defendant shall deliver to the court or judge, an undertaking executed by at least two sureties, residents of the district, to the effect that the sureties will, on demand, pay to the plaintiff the amount of any judgment that may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be sufficient to satisfy the amount claimed by the plaintiff in his complaint, and the costs. The sureties may be required to justify, on such application before the judge or court, and the property attached shall not be released from the attachment without their justification, if the same be required.

SEC. 138. In all cases, when property or effects have been attached, the defendant, or any creditor of the defendant interested, may file a plea in the nature of a plea in abatement, under oath, putting in issue the truth of the facts alleged in the affidavit on which the attachment was sued out.

SEC. 139. Upon such issue, the plaintiff shall be held to prove that the facts alleged by him in said affidavit, as the grounds of the attachment, existed at the time of the issuance of the writ of attachment.

SEC. 140. If the issue be found against the plaintiff, the attachment shall be dismissed at the cost of the plaintiff, and his sureties shall thereafter be liable upon the bond for all damages sustained by the defendant, in consequence of the issuing of the attachment.

SEC. 141. The sheriff shall return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon, or attached thereto.

CHAPTER V.

DEPOSIT IN COURT.

SEC. 142. Court may order subject matter to be.

143. Appointment of receiver.

SEC. 142. When it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs, or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

SEC. 143. A receiver may be appointed by the court in which the suit is pending, or by a judge thereof: First. Before judgment, provisionally, on the application of either party, when he establishes a *prima facie* right to the property, or to an interest in the property which is the subject of the action, and which is in possession of an adverse party, and the property, or its rents and profits, are in danger of being lost or materially injured or impaired. Second. After judgment, to dispose of the property according to the judgment, or to preserve it during the pending of an appeal; and, Third. In such other cases as are in accordance with the practice of the courts of equity jurisdiction.

TITLE VI.

CHAPTER I.

TRIAL AND JUDGMENT.

SEC. 144. Judgment.

145. How given, effect of.

146. Against one of several defendants.

147. Extent of relief.

148. Dismissal of action, or nonsuit.

149. Judgments on merits.

SEC. 144. A judgment is the final determination of the

rights of the parties in the action or proceeding, and may be entered in term or vacation.

SEC. 145. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

SEC. 146. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

SEC. 147. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but, in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

SEC. 148. An action may be dismissed or judgment of non-suit entered in the following cases: First. By the plaintiff himself, at any time before trial, upon the payment of costs, if a counter-claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon. Second. By either party, upon the written consent of the other. Third. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth. By the court, when, upon the trial, and before the final submission of the case, the plaintiff abandons it. Fifth. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury. The dismissal in the first two subdivisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

SEC. 149. In every case other than those mentioned in the last section, the judgment shall be rendered on the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

SEC. 150. Judgment may be had, if the defendant fail to answer, as follows: First. In an action arising upon contract for the recovery of money or damages only, if no answer has

been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-two. Second. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply, at the first or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference, as above provided. Third. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

OF ISSUES, AND THE MANNER OF THEIR DISPOSITION.

- Sec. 151. When an issue arises.
152. Of law, and of fact.
154. Of law, how tried.
155. Of fact, how tried.
156. Entry of causes on calender.
157. Either party may bring issue to trial.
158. Postponement of trial.

SEC. 151. An issue arises when a fact or conclusion of law is maintained by the one party, and controverted by the other. Issues are of two kinds: First. Of law. Second. Of fact.

SEC. 152. An issue of law arises upon a demurrer to the complaint or answer, to some part thereof.

SEC. 153. An issue of fact arises: First. Upon a material allegation in the complaint controverted by the answer. Second. Upon new matters in the answer, except an issue of law is joined therein.

SEC. 154. An issue of law shall be tried by the court, unless it be referred, upon consent, as provided in chapter six of this title.

SEC. 155. An issue of fact shall be tried by a jury, unless a jury trial is waived or a reference ordered, as provided in this act. Where there are issues both of law and fact to the same complaint, the issues of law shall be first disposed of.

SEC. 156. The clerk shall enter causes upon the calendar of the court according to the date of the issue. Causes once placed on the calendar, for a general or special term, if not tried or heard at such term, shall remain upon the calendar from court to court, until finally disposed of.

SEC. 157. Either party may bring the issue to trial or to a hearing, and, in the absence of the adverse party, (unless the court, for good cause, otherwise direct,) may proceed with his case and take a dismissal of the action or a verdict or judgment, as the case may require.

SEC. 158. A motion to postpone a trial, on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

CHAPTER IV.

TRIAL BY JURY.

ARTICLE I. FORMATION OF THE JURY.

SEC. 159. Jury, how drawn.

Sec. 160. To be sworn, form of oath.

161. Challenge to, and for cause.

163. Challenge how tried.

SEC. 159. When the action is called for trial by jury, the clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if, from any cause, a juror, or jurors be excused or discharged, the sheriff shall summons, under the direction of the court, from the citizens of the county, and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

SEC. 160. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors, in substance that they, each of them, will well and truly try the matters in issue between —, the plaintiff, and —, the defendant, and a true verdict render according to the evidence.

SEC. 161. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to four peremptory challenges.

SEC. 162. Challenges for cause may be taken on one or more of the following grounds: First. A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second. Consanguinity or affinity within the third degree to either party. Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any bond or obligation for either party. Fourth. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action. Fifth. Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation. Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh. The existence of a state of

mind in the juror evincing enmity against or bias to either party.

SEC. 163. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

ARTICLE II. CONDUCT OF THE TRIAL.

SEC. 164. Juror becoming sick.

165. Charge to jury.

166. Jury may decide in court, or retire ; duty of officer.

167. What papers jury may take.

168. Return of jury for instruction, and how given.

169. Proceedings when jury discharged without verdict.

170. Court may adjourn during absence of jury, sealed verdict.

171. Verdict how given.

172. May be corrected.

173. How recorded, juror disagreeing to be sent out again.

SEC. 164. If, after the empanneling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, the trial may proceed with the other jurors, or a new jury may be sworn, and the trial begin anew ; or the jury may be discharged, and a new jury then or afterwards empaneled.

SEC. 165. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict ; and, if it state the testimony of the case, it shall also inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or shall sign, at the time, a statement of such points prepared and submitted by the council of either party.

SEC. 166. After hearing the charge, the jury may either decide in court or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons ; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict ; and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

SEC. 167. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves or any of them; but none taken by any other person.

SEC. 168. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

SEC. 169. In all cases where a jury are discharged, or prevented from giving a verdict, by reason of accident, or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct.

SEC. 170. While the jury are absent, the court may adjourn, from time to time, in respect to other business; but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered, or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess, or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

SEC. 171. When the jury shall have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. Their names shall then be called, and they shall be asked by the court, or clerk, whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

SEC. 172. If the verdict be informal, or insufficient in not covering the whole issue or issues submitted, the verdict may be corrected by the jury, under the advice of the court, or the jury may be again sent out.

SEC. 173. When the verdict is given, and is not informal or insufficient, the clerk shall immediately record it in full, in the minutes, and shall read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the jury shall be again sent out; but if no disagreement be expressed, the verdict shall be complete, and the jury shall be discharged from the case.

ARTICLE III. THE VERDICT.

SEC. 174. Kinds of verdict.

176. When to find amount of recovery.

177. In action to recover specific property.

178. Entry in minutes.

SEC. 174. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall so be presented as that nothing shall remain to the court but to draw from them conclusions of law.

SEC. 175. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special finding or verdict shall be filed with the clerk and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

SEC. 176. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counter-claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

SEC. 177. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of the defendant, they also find that he is entitled to a return thereof, shall find the value of the property, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

SEC. 178. Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the ver-

dict; and where a special verdict is found, either the judgment rendered thereon, or, if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER V.

TRIAL BY THE COURT.

Sec. 179. Jury trial may be waived.

180. Decision of court.

181. Chancery cases.

Sec. 179. Trial by jury may be waived by the several parties to an issue of fact, in actions arising on contract, and with the assent of the court in other actions, in the manner following: First. By failing to appear at the trial. Second. By written consent, in person or by attorney, filed with the clerk. Third. By oral consent, in open court, entered in the minutes. The court may prescribe by rule what shall be deemed a waiver in other cases.

Sec. 180. Upon the trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk, within ten days after the trial took place. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly.

Sec. 181. Chancery cases may be tried by the court with or without the finding of a jury upon issue formed by the court; and on a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

CHAPTER VI.

OF REFERENCES, AND TRIAL BY REFEREES.

Sec. 182. Issues of law and fact may be referred.

183. When parties do not consent the court may.

Sec. 184. When issue require examination of long accounts.

186. Reference not to consist of more than three.

187. Qualification of.

189. Report shall state facts and law separately, and shall file evidence received on trial.

190. Either party may move to set aside judgment.

Sec. 182. All or any of the issues in the action, whether of fact or law, or both, may be referred, upon the written consent of the parties.

Sec. 183. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases :

Sec. 184. When the trial of an issue of fact shall require the examination of a long account on either side ; in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein ; or, When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect ; or, When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action,

Sec. 185. When it is necessary for the information of the court in a special proceeding.

Sec. 186. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three.

Sec. 187. When the appointment of referees is made by the court or judge, each referee shall be : First. Qualified as a juror as provided by statute. Second. Competent as a juror between the parties.

Sec. 188. When the referees are chosen by the court, each party shall have the same right to challenge, as to such referees, to be made and determined in the same manner and with like effect, as in the formation of juries, except that neither party shall be entitled to a peremptory challenge. Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order, and punish all violations thereof, upon such trial, and to compel the attendance of witnesses, and to punish them for non-attendance, or refusal to be sworn or testify, as is possessed by the court.

Sec. 189. The report of the referees shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the

facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial, and the party offering the same except to the decision, rejecting such evidence at the time, the exception shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, require that the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred.

SEC. 190. The report shall be filed with the clerk. If it be filed in term time, either party may, within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside or for judgment thereon, or such order or proceeding as the nature of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following. The court may affirm or set aside the report, either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference, as to all, or so much of the report as is set aside, to the original referees, or others, or it may find the facts and determine the law itself, and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of a jury.

CHAPTER VII.

ARTICLE I. EXCEPTIONS.

SEC. 191. Exception defined.

192. How taken.

194. When implied.

SEC. 191. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, or in the admission of evidence, or in the charge to a jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

SEC. 192. The point of the exception shall be particularly stated, and may be delivered in writing to the judge, or, if the party require it, shall be written down by the clerk. When delivered in writing, or written down by the clerk, it shall be made conformable to the truth, or be at the time corrected until it is so made conformable. When not delivered in writing, or written down as above, it may be entered in the judge's minutes, and afterwards settled in a statement of the case as provided in this act.

SEC. 193. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence, or other matter, as is necessary to explain it, but no more; and the whole as briefly as possible.

SEC. 194. When a cause has been tried by the court or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on a motion for a new trial or on appeal, without any special notice that an exception is taken thereto.

ARTICLE II. NEW TRIALS.

SEC. 195. Defined.

196. For what cause granted.

197. When application to be made on affidavit.

198. Prerequisites to motion for.

199. Application, when to be made.

SEC. 195. A new trial is a re-examination of an issue of fact, in the same court, after a trial and decision by a jury, court or referees in actions at law; but, in chancery cases, such re-examination shall be called a re-hearing; and motions for a new trial or re-hearing, as the case may be, shall be conducted as in this article provided.

SEC. 196. The former verdict or other decision may be vacated, and a new trial or re-hearing granted, on the application of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party: First. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial. Second. Misconduct of the jury. Third. Accident or surprise, which ordinary prudence could not have guarded against.

Fourth. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial. Fifth. Excessive damages, appearing to have been given under the influence of passion or prejudice. Sixth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law. Seventh. Error in law, occurring at the trial, and excepted to by the party making the application.

SEC. 197. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it shall be made upon affidavit; for any other cause it shall be made upon a statement prepared as provided in the next section.

SEC. 198. The party intending to move for a new trial shall give notice of the same within two days after the trial, and shall, within five days after such notice, prepare and file with the clerk the affidavit required by the last section, or a statement of the grounds upon which he intends to rely. If no affidavit or statement be filed within five days after the notice, the right to move for a new trial shall be deemed waived. The statement shall contain so much of the evidence or reference thereto, as may be necessary to explain the grounds taken, and no more. Such statement, when containing any portion of the evidence of the case, and not agreed to by the adverse party, shall be settled by the judge, upon notice. On the argument, reference may also be made to the pleadings, depositions and documentary evidence on file and to the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter-affidavits on the hearing. Any counter-affidavits shall be filed with the clerk one day, at least, previous to the hearing.

SEC. 199. The application for a new trial or re-hearing shall be made at the earliest period practicable, after filing the affidavit or statement.

CHAPTER VIII.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

SEC. 200. Judgment, how and when entered.

201. Argument of case.

202. Where counter-claims exceed demands of plaintiff.

SEC. 203. In action for recovery of personal property.

204. Judgment book.

205. Death of party.

206. Judgment roll and lien of.

208. Docket, how kept.

209. To be kept open for inspection.

210. Judgment lien in other counties, and duration of.

211. Satisfaction of Judgment, how entered.

SEC. 200. When trial by jury has been had, judgment shall be entered by the clerk in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

SEC. 201. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

SEC. 202. If a counter-claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

SEC. 203. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return of the property, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

SEC. 204. The clerk shall keep among the records of the court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

SEC. 205. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may, nevertheless, render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

SEC. 206. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll: First. In case the complaint be not answered by any defendant, the summons, with the affidavit or proof of service and the complaint, that the default of the defendant in not answering was entered, and a copy of the judgment. Second. In all other cases, the sum-

mons, pleadings, and a copy of the judgment, and any orders relating to a change of the parties.

SEC. 206. Immediately after filing the judgment-roll, the clerk shall make proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it shall become a lien upon all the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment is previously satisfied.

SEC. 208. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment Debtors; Judgment Creditors; Judgment; Time of Entry; Where entered in Judgment Book; Appeals, when taken; Judgment of Appellate Court; Satisfaction of Judgment, when entered. If judgment be for recovery of money or damages, the amount shall be stated in the docket under the head of Judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

SEC. 209. The docket kept by the clerk shall be open at all times, during office hours, for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such a manner as to facilitate their inspection.

SEC. 210. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any other county; and from the time of the filing, the judgment shall become a lien upon all the real property of the judgment debtor, not exempt from execution in such county, owned by him at the time or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

SEC. 211. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, by the judgment creditor; or within one year after the judgment, by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party or attorney to give such ac-

knowledge; and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

TITLE VII.

OF THE EXECUTION OF JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

THE EXECUTION.

- [Sec. 212. Limit for issue of writ of
213. Forms of, and what to contain.
214. On judgment on joint contract.
215. When returnable.
216. When judgment requires performance of other acts than payment, etc.
217. How issued after five years.
218. After death of party.
219. May issue to different counties.
220. Property liable to.
221. Real and personal property belonging to married woman.
222. What property is exempt from execution or attachment.
223. May waive.
224. Defendant may select.
225. When property levied upon is claimed to be exempt.
226. How satisfied.
227. Sale of property, notice how given.
228. Penalty for selling without notice.
229. Sales how made.
230. Purchaser refusing to pay, property to be resold.
231. Proceedings to enforce payment of loss of re-sale.
232. Amount for which officer is liable.
233. Certificate of sale, etc.
235. Sale of real estate, when absolute.
236. When subject to redemption.
237. Redemption, how made.
241. Waste may be restrained.
242. Rents and profits.
243. When purchaser may recover price paid from judgment creditor.]

Sec. 212. The party in whose favor judgment is given, may, at any time within five years from the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter of this act.

SEC. 213. The writ of execution shall be issued in the name of the people of the United States of the territory of Idaho, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, the names of the parties, the judgment, and, if it be for money, the amount thereof, and the amount actually due thereon, and shall require the sheriff substantially as follows: First. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or, if the judgment be a lien upon real property, then out of the real property belonging to him on the day the judgment was docketed; or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or at any time thereafter. Second. If it be against real or personal property, in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property. Third. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor, and commit him to the jail of the county until he pay the judgment with interest, or be discharged according to law. Fourth. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time, require the sheriff to satisfy any costs, damages, rents or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of real property, as provided in the first subdivision of this section.

SEC. 214. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants, and the individual property only of the defendants who were served, or who appeared in the action. In other

respects, the writ shall contain the directions specified in the first subdivision of the last section.

SEC. 215. The execution may be made returnable at any time, not less than five, nor more than sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed.

SEC. 216. Where judgment requires the payment of money or the delivery of real or personal property, the same shall be enforced, in those respects, by execution. Where it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby, or by law to obey the same, and his obedience thereto enforced.

SEC. 217. After the lapse of five years from the entry of judgment, an execution shall be issued only by leave of the court, on motion. Such leave shall not be given, unless it be established by the oath of the party, or other proof, that the judgment, or some part thereof, remains unsatisfied and due.

SEC. 218. Notwithstanding the death of a party after the judgment, execution thereon against his property may, upon permission granted by the probate court, be issued and executed in the same manner, and with the same effect, as if he were still living.

SEC. 219. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof is situated. Executions may be issued at the same time, to different counties.

SEC. 220. All goods, chattels, moneys and other property, real and personal, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Until a levy, property shall not be affected by the execution. Shares and interests in any corporation or company, and debts and credits, and other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust, and gold and silver bullion, shall be returned by the officer as so much money collected at its current value, without exposing the same to sale.

SEC. 221. All real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such marriage, or to which she shall have after become entitled in her own right, and all her personal earnings, and all the issues, rents and

profits of such real estate, shall not be liable to attachment for or execution upon any liability or judgment against the husband, so long as she or any minor child of her body shall be living: *Provided*, That her separate property shall be liable for debts owing by her at the time of her marriage.

SEC. 222. The following property shall be exempt from execution or attachment, except as is hereafter specially provided: First. A homestead, not exceeding three thousand dollars in value, to include the dwelling house and other buildings and the land or lots upon which they stand. Second. All wearing apparel of every person and family. Third. All private libraries, musical instruments, family pictures and keepsakes. Fourth. To each household, two beds and bedding, and one additional bed and bedding for every two members of the family, and other household goods and utensils and furniture not exceeding two hundred and fifty dollars in value. Fifth. To each householder, one horse, two cows, with their calves, ten swine, ten stands of bees, one hundred domestic fowls, and provisions and feed for the comfortable maintenance of such household and family for six months: *Provided*, That in case such householder shall not possess or shall not desire to retain the animals named above, he may select from his stock and retain other animals, not to exceed three hundred dollars in value. Sixth. To a farmer, the tools, implements and farming utensils actually used about the farm, two yoke of oxen, with yokes and chains, or one span of horses, with harness, and one wagon. Seventh. To a mechanic, the tools and instruments used to carry on the trade, occupation or business in which he is engaged for his support, or the support of his family; also, material not exceeding in value two hundred dollars. Eighth. To physicians, their libraries and medicines, of the value of two hundred dollars. Ninth. To attorneys, clergymen, teachers and other professional men, their libraries. Tenth. All property of the territory, or of any county, incorporated city, town or village therein, or of any public or municipal corporation of like character. Eleventh. All fire-arms kept for the use of any person or family. Twelfth. To any person, a skiff or small boat, with its oars, sails and rigging, not exceeding in value fifty dollars. Thirteenth. The tent and furniture, including a table, camp stools, bed and bedding of a miner; his rocker, shovels, spades, picks, wheelbarrows, pumps and other instruments used in mining, with provisions necessary for his support for three months. Fourteenth. A sufficient quantity of hay or grain or feed for keeping for four months, the animals mentioned in the several subdivisions of this sec-

tion as exempted from execution and attachment. But no article of property mentioned in this section shall be exempt from an execution issued upon a mortgage thereon, or for any tax levied thereon, or for any judgment for the purchase money thereof: *Provided*, That no mortgage made by a married man of any property exempted from execution and attachment by this act, shall be of any validity unless the wife shall join in such mortgage, and the same be witnessed and acknowledged by her as is required in case of a deed conveying her interest in real estate.

SEC. 223. Any single man, or a married man, his wife joining him in the waiver, may waive the benefit, if they act by an agreement in writing, to be witnessed and acknowledged in the manner required in a deed conveying real estate.

SEC. 224. In all cases the defendant himself may select the property which is exempt.

SEC. 225. When a sheriff or other officer has levied upon or attached, or is about to levy upon or attach personal property which is claimed to be by law exempt from execution or attachment, the sheriff or other officer shall, if required by the person claiming, forthwith summon three discreet and disinterested men, having the qualifications of jurors and resident in the vicinity where the property is found, and administer to them an oath impartially to examine and determine how much, if any of said property is so exempt. Such persons shall have full power to summon witnesses, administer the necessary oaths, and adjourn from time to time, not longer than three days in all. They shall also have power to appraise the property claimed, and the other property of the claimant, so far as may be necessary to determine what portion of it is exempt. They shall deliver their decision to the sheriff in writing, and he shall forthwith deliver to the person claiming, such as is by them decided exempt from execution; but nothing in this section contained shall prevent the person claiming the property from giving a bond and trying his right before the district court, as is provided in cases for trying the right of property claimed by other persons than the judgment debtor.

SEC. 226. The sheriff shall execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment, or depositing the amount with the clerk of the court; any excess in the proceeds over the judgment and the sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment

debtor than is sufficient to satisfy the judgment and the sheriff's fees, within the view of the sheriff, he shall levy on only such part of the property as the judgment debtor may indicate: *Provided*, That the judgment debtor be present and indicate at the time of the levy, such part: *And, Provided*, That the property indicated be amply sufficient to satisfy such judgment and fees.

SEC. 227. Before the sale of property, on execution, notice thereof shall be given as follows: First. In case of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property. Second. In case of other personal property, by posting a similar notice in three public places of the township or city where the sale is to take place, not less than five nor more than ten days successively. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold; and publishing a copy thereof once a week, for the same period, in a newspaper in the county, if there be one.

SEC. 228. An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages; and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars.

SEC. 229. All sales of property under execution shall be made at auction, to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon; after sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser at such sale. When the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest prices; and when the sale is of real property, and consists of several known lots or parcels, they shall be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to ad-

vantage separately; and the sheriff shall be bound to follow such directions.

SEC. 230. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property, at any time, to the highest bidder; and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, by motion, upon previous notice of five days, before any court or before any justice of the peace, if the same shall not exceed his jurisdiction.

SEC. 231. Such court or justice shall proceed in a summary manner to give judgment, and issue execution therefor forthwith; but the defendant may claim a jury. And the same proceeding may be had against any subsequent purchaser, who may refuse to pay; and the officer may, in his discretion, thereafter reject the bid of any person so refusing.

SEC. 232. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchasers, and the amount collected from the purchaser refusing to pay.

SEC. 233. When the purchaser of any personal property, capable of manual delivery, shall pay the purchase money, the officer making the sale shall deliver to the purchaser the property, and, if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title and interest which the debtor had in and to such property on the day the execution was levied.

SEC. 234. When the purchaser of any personal property not capable of manual delivery, shall pay the purchase money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title and interest which the debtor had in and to such property on the day the execution was levied.

SEC. 235. Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases, the real property sold shall be subject to redemption, as provided in this act. The officer shall give to the purchaser a certificate of the sale, containing: First. A particular description of the real property sold. Second. The price paid for each distinct lot or parcel. Third. The whole price paid. Fourth. When subject to redemption, it shall be so stated. A duplicate of such certificate shall be filed with the recorder of the county.

SEC. 236. Property sold subject to redemption, as pro-

vided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest: First. The judgment debtor, or his successor in interest, in the whole or any part of the property. Second. A creditor, having a lien by judgment or mortgage on the property sold. The persons mentioned in the second subdivision of this section are in this act termed redemptioners.

SEC. 237. The judgment debtor, or a redemptioner, may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, with eighteen per cent. thereon in addition, together with the amount of any assessments or taxes which the purchaser may have paid thereon; and if the purchaser be also a creditor, having a lien prior to that of the redemptioner other than the judgment under which the purchase was made, the amount of such lien with interest.

SEC. 238. If the property be so redeemed by a redemptioner, either the judgment debtor, or any other redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes, which the said last redemptioner may have paid thereon, after the redemption by him, with interest on such amount; and the amount of any liens held by said last redemptioner prior to his own, with interest in addition: *Provided*, That the judgment under which the property was sold need not be paid as a lien. The property may be again redeemed, and as often as the debtor or a redemptioner, within sixty days after the last redemption, pay the amount of the last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the said last previous redemptioner paid after the redemption by him, with interest thereon; and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner, previous to his own, with interest. Notice of redemption shall be given to the sheriff. If no redemption be made within six months after sale, the purchaser or his assignee shall be entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner, or his assignee, be entitled to a sheriff's deed. If the debtor redeem at any time before the time for redemption expires, the effects of the sale shall be terminated, and he be restored to his estate.

SEC. 239. The payment mentioned in the last two sections may be made to the purchaser or redemptioner as the case may be, or for him, to the officer who made the sale, and a tender of the money shall be equivalent to payment.

SEC. 240. A redemptioner shall produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the sheriff: First. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder. Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and, Third. An affidavit by himself, or his agent, showing the amount then actually due on the lien.

SEC. 241. Until the expiration of the time allowed for redemption, the court may restrain the commission of any waste on the property, by order granted, with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family, while he occupies the property.

SEC. 242. The purchaser from the time of sale until a redemption, and a redemptioner, from the time of his redemption, until another redemption, shall be entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof: *Provided*, That in case the property shall be redeemed as provided in this act, the amount of such rents and profits which may have been received by such purchaser or redemptioner, or which said purchaser or redemptioner may have been entitled to claim or receive, unless such claim shall be released to the person claiming such right of redemption, shall be deducted from the amount which such purchaser or redemptioner may have been entitled to receive on such redemption.

SEC. 243. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom, in consequence of irregularity in the proceedings concerning the sale or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment cred-

itor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon, from the time of payment, at the same rate that the original judgment bore; and when so revived, the said judgment shall have the same effect as the original judgment of said court, of that date, and bearing interest as aforesaid; and any other or after acquired property, rents, issues or profits of the said debtors, shall be liable to levy and the sale under execution in satisfaction of such debt; *Provided*, That no property of such debtor sold, *bona fide*, before the filing of such petition, shall be subject to the lien of said judgment; *And, provided further*, That notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office of the county where such property may be situated; and that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest. All sales ordered by the court shall be conducted in the same manner as sales upon execution.

CHAPTER II.

CLAIM TO PROPERTY LEVIED UPON AND ATTACHED.

Sec. 244. When other than judgment debtor claims property.

245. Officer shall return papers to clerk of district court who shall place the same on docket for trial.

246. Person claiming property shall be plaintiff.

247. If claimant fail to maintain his title, judgment shall be rendered against him.

Sec. 244. When any other than the judgment debtor shall claim property levied upon or attached, he may have the right to demand and receive the same from the sheriff or other officer making the attachment or levy, upon his making an affidavit that the property is his, or that he has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff or officer a bond, with sureties, in double the value of such property, conditioned that he will

appear at the next term of the district court in which the property was seized, which shall commence ten days or more after the bond is accepted by the sheriff or other officer, and make good his title to the same, or that he will return the property or pay its value to the said sheriff or other officer. If the sheriff or other officer require it, the sureties shall justify, as in other cases; and in case they do not so justify when required, the sheriff or officer shall retain the property. If the sheriff or officer do not require the bail to justify, he shall stand good for their sufficiency. He shall date and endorse his acceptance on the bond.

Sec. 245. The officer shall return the affidavit, bond and justification, if any, to the office of the clerk of the district court, and the clerk shall place the same upon his trial docket at the first term, which shall commence ten days or more after it was accepted by the sheriff or officer, as above provided for, and it shall stand for trial at that term.

Sec. 246. The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution defendants.

Sec. 247. If the claimant makes good his title to the property, the bond shall be canceled; if to a portion thereof, a like proportion to the bond shall be canceled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such a less amount as shall not exceed the amount due on the original execution or attachment. Where the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; where the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; where the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if they shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs or any portion thereof.

CHAPTER III.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

Sec. 248: When judgment debtor may be required to answer.

Sec. 249. Persons indebted to judgment debtor may pay execution.

250. Debtor of judgment debtor may be required to answer.

251. Debtor to appear and answer.

252. Witnesses may be required to appear.

253. Property liable to execution.

254. Court may order cross-action in certain cases.

255. Penalty of disobedience of order of referee.

Sec. 248. When an execution against property of the judgment debtor, or of any one of several debtors in some judgment issued to the sheriff of the county where he resides, or if he do not reside in this territory, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a judge of the court, requiring such judgment debtor to appear and answer concerning his property, before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor shall be required to attend before a judge or referee out of the county in which he resides, when proceedings are taken under the provisions of this act.

Sec. 249. After the issuing of an execution against property, and upon proof upon affidavit of a party or otherwise, to the satisfaction of the court, or of a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge, or referee appointed by him, to answer concerning the same; and such proceeding may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient security, that he will attend from time to time before the judge or referee, as shall be directed during the pendency of proceedings, and until the final determination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison.

Sec. 250. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may

be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

SEC. 251. After the issuing and return of an execution against the property of a judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

SEC. 252. Witnesses may be required to appear and testify before the judge, or referee, upon any proceedings under this act, in the same manner as upon the trial of an issue.

SEC. 253. The judge may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or in part by his labor.

SEC. 254. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order to that effect, the judgment creditor to institute a suit against such person or corporation for the recovery of such interests or debt; and the court or judge may, by an order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by a judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

SEC. 255. If any person, party, or witness, disobey an order of the referee, properly made in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference, for a contempt.

TITLE VIII.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

Sec. 256. Court, power of, to direct sale of property.

257. Surplus after sale, how disposed of.

258. Sale, when debt is not due, rebate of interest.

Sec. 256. There shall be but one action for recovery of debt, or the enforcement of any right secured by a mortgage, or lien, upon real estate, or personal property, which shall be for enforcement of said lien, or mortgage, in accordance with the provisions of this chapter. In such action, the court shall have power before judgment, or decree, to direct a sale of the encumbered property, or such part thereof as shall be necessary, and the application of the proceeds to the payment of the costs and expenses of the sale, the costs of the writ, and the amount due to the plaintiff. If it shall appear from the sheriff's return that there is a deficiency of such proceeds, and a balance still due to the plaintiff, the judgment shall be docketed for such balance, and shall, from the time of such docketing, be a lien upon the real estate of the judgment debtor, and an execution may be issued by the clerk of the court, as on other judgments against the property of the judgment debtor, to collect such balance or deficiency.

Sec. 257. If there be surplus money remaining after payment of the amount due on the mortgage, lien or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and, in the meantime, may direct it to be deposited in court.

Sec. 258. If the debt for which the mortgage, lien or encumbrance is held, be not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE AND WILFULL TRESPASS, IN CERTAIN CASES,
ON REAL PROPERTY.

SEC. 259. Nuisance defined, action for, judgment for.

260. Waste, action for, judgment for.

261. Injuring timber, etc., liability for.

263. Forcible or unlawful entry, judgment for.

SEC. 259. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, or the obstruction of any highway, or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance; and by the judgment, the nuisance may be enjoined or abated, as well as damages recovered.

SEC. 260. If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor; in which action there may be judgment for treble damages.

SEC. 261. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway in front of any person's house, village or city lot, or cultivated grounds; or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any court having jurisdiction.

SEC. 262. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of the public highway or bridge upon the land or adjoining it.

SEC. 263. If a person recover damages for a forcible or unlawful entry in or upon, or detention of, any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

- Sec. 264. Action by person in possession.
265. Cost, when not to be recovered.
266. Action, when right has terminated during pendency.
267. Improvements, value of to be allowed.
268. Court may allow survey to be made.
269. Order for survey.
270. Mortgage not to be deemed conveyance.
271. Court may enjoin injury.
272. Damages for injury, who may recover.
273. Action for recovery not prejudiced by alienation.

SEC. 264. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate or interest.

SEC. 265. If the defendant in such action disclaim in his answer, any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

SEC. 266. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pending of the action, the verdict and judgment shall be according to the fact; and the plaintiff may recover damages for withholding the property.

SEC. 267. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

SEC. 268. The court in which an action is pending for the recovery of real property, or a judge thereof, may, on motion, upon notice to either party, for good cause shown, grant an order allowing to such party the right to enter upon the property, and make survey and measurement thereof, for the purpose of the action.

SEC. 269. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and there-

upon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurements; but if any unnecessary injury be done to the property, he shall be liable therefor.

Sec. 270. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Sec. 271. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or after a sale on execution, before a conveyance.

Sec. 272. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

Sec. 273. An action for the recovery of real property against a person in possession, cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

CHAPTER IV.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

Sec. 274. Action to be brought by district attorney.

275. Complaint, what to state, defendant may be arrested.

276. Judgment, how rendered.

277. When person alleged to be entitled may enter an office.

278. Damages recoverable.

279. Rights of several may be tried in one action.

280. Judgment when defendant has intruded into office.

Sec. 274. An action may be brought by the district attorney in the name of the people of the United States and of the territory of Idaho, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this territory. And it shall be the duty of the district attorney to bring the action, whenever he has reason to believe that any such office or fran-

chise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor.

SEC. 275. Whenever such action is brought, the district attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested, and held to bail, in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest.

SEC. 276. In every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party alleged to be entitled; or only upon the right of the defendant, as justice shall require.

SEC. 277. If the judgment be rendered upon the right of the person alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

SEC. 278. If the judgment be rendered upon the right person so alleged to be entitled, in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

SEC. 279. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

SEC. 280. When a defendant, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant shall be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine, not exceeding five thousand dollars; which fine, collected, shall be paid into the treasury of the territory.

TITLE IX.

APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

- Sec. 281.** Judgment, how received.
- 282.** Order, how vacated.
- 283.** Parties designated.
- 284.** In what cases an appeal may be taken and how.
- 286.** Statement, how annexed to record, what to contain.
- 287.** Waiver of.
- 288.** Time may be enlarged.
- 289.** How certified.
- 290.** To be annexed to judgment roll.
- 291.** Certain sections not to apply to appeals from order.
- 292.** Appeals from judgment, what may be reviewed.
- 294.** Duty of appellant.

Sec. 281. A judgment, or order, in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this title, and not otherwise.

Sec. 282. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Sec. 283. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Sec. 284. An appeal may be taken—First. From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered, within six months after the rendition of the judgment. Second. From a judgment rendered on an appeal from the probate court, within ninety days after the rendition of the judgment. Third. From an order granting or refusing a new trial or a rehearing; from an order refusing to change the place of trial of an action or proceeding after a motion is made therefor, in the cases provided by law, or on the ground that the judge is disqualified from hearing or trying the same; from an order granting or dissolving an injunction, and from an order refusing to grant or dissolve an injunction, and from any special order made after final judgment, within sixty days after the order is made and entered in the minutes of the court. This

section shall not extend to appeals to the district court from orders or judgments of the probate courts, but shall extend to judgments rendered in the district court on such appeals.

SEC. 285. The appeal shall be made by filing with the clerk of the court with whom the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party, or his attorney.

SEC. 286. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgement or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall contain the grounds upon which he intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more; and shall file the same with the clerk. The respondent may, within five days thereafter, prepare amendments to the statement, and serve a copy on the appellant. If such amendments are admitted, the statement shall be corrected accordingly; and, if not admitted, the statement and amendments shall be presented to the judge who tried or heard the case, upon notice of two days to the respondent, and a true statement shall thereupon be settled by such judge.

SEC. 287. If the party shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge, they shall be respectively deemed, the former to have agreed to the statement as proposed, and the latter to have agreed to the amendment as proposed, and no settlement of the statement, or certificate thereto by the judge shall be required.

SEC. 288. The several periods of time above limited may be enlarged upon good cause shown by the judge before whom the cause was tried.

SEC. 289. The statement, when settled by the judge, shall be signed by him, with his certificate that the same has been allowed and is correct; when the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

SEC. 290. The clerk shall annex the statement, if the appeal be from a final judgment, to the judgment roll; if the appeal be from an order, to such order, or a copy thereof.

Sec. 291. The provisions of the last preceding sections shall not apply to appeals taken from an order made upon an affidavit filed, but such affidavit shall be annexed to the order in the place of the statement mentioned in those sections.

Sec. 292. Upon an appeal from a judgment, the court may review any intermediate order involving the merits, and necessarily affecting the judgment.

Sec. 293. Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm, or modify any or all of the proceedings subsequent to or dependent upon such judgment or order; and may, if necessary or proper, order a rehearing. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order; and when it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just.

Sec. 294. On an appeal from a final judgment, the appellant shall furnish the court with a copy of the notice of appeal, the judgment roll, and the statement annexed (if there be one), certified by the clerk to be a correct copy. On appeal from a judgment rendered on an appeal, or from an order, the appellant shall furnish the court with a copy of the notice of appeal, the judgment or order appealed from, and a copy of the papers used in the hearing of the court below—such copies to be certified by the clerk to be correct. If any written opinion be placed on file, on rendering the judgment or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed.

CHAPTER II.

APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURT.

Sec. 295. In what cases may be taken.

296. Undertaking of appellant.

297. Same, when judgment stayed by appeal.

301. Appeal perfected stays further proceedings.

302. Undertaking in one of several instruments.

303. Justification of sureties necessary.

Sec. 304. Appeal, how perfected in cases not provided for.

305. Hearing of appeal.

306. Judgment on appeal.

Sec. 295. An appeal may be taken to the supreme court from the district courts in the following cases: First. From a final judgment rendered in action or special proceeding, commenced in those courts or brought into those courts from another court. Second. From an order granting or refusing a new trial or rehearing; from an order refusing to change the place of trial of an action or proceeding, after a motion is made therefor, in the cases provided by law, or on the ground that a judge is disqualified from hearing or trying the same; from an order granting or dissolving an injunction, and from any special order made after final judgment.

Sec. 296. To render an appeal effectual for any purpose, in any case, a written undertaking in not less than three hundred dollars shall be executed on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal; or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the event of the appeal. Such undertaking shall be filed, or such deposit made with the clerk, within five days after the notice of appeal is filed.

Sec. 297. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant, by two or more sureties, stating their place of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order, that if the judgment or order appealed from, or any part thereof, be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part; and all damages and costs which shall be awarded against the appellant upon the appeal.

Sec. 298. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint; or, unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court or judge thereof, or probate judge, may

direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

SEC. 299. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal, until the instrument is executed and deposited with the clerk with whom the judgment or order is entered, to abide the judgment of the appellate court.

SEC. 300. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon; and that, if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

SEC. 301. Whenever an appeal is perfected, as provided by the preceding sections in this chapter, it shall stay all further proceedings in the court below, upon the judgment or order appealed from, or upon the matter embraced therein; but the court below may proceed upon any other matter included in the action, and not affected by the judgment or order appealed from. And the court below may, in its discretion, dispense with or limit the security required by the said sections, when the appellant is an executor, administrator, trustee, or other person acting in another's right.

SEC. 302. The undertaking prescribed by sections two hundred and ninety-six, two hundred and ninety-seven, two hundred and ninety-eight and three hundred, may be in one instrument or several, at the option of the appellant.

SEC. 303. An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties, that they are each worth the amount specified therein, over and above all their just debts and liabilities, exclusive of property exempt from execution; except where the judgment exceeds three thousand dollars, and the undertaking on appeal is executed by more than two sureties, they may state in their affidavit that they are severally worth amounts less than that

expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties. The adverse party may, however, except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before a judge of the court below, or a probate judge, or the county clerk, within five days thereafter, upon notice to the adverse party, to the amount stated in their affidavit, the appeal shall be regarded as if no such undertaking had been given; and in all cases where an undertaking is required on appeal, by the provisions of this chapter of this act, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all cases, the undertaking or deposit may be waived, by the written consent of the respondent.

SEC. 804. In cases not provided for in sections two hundred and ninety-seven, two hundred and ninety-eight, two hundred and ninety-nine, and three hundred, the perfecting of an appeal, by giving the undertaking and the justification of the sureties thereon, if required, or making the deposit mentioned in section two hundred and ninety-six, shall stay proceedings in the court below upon the judgment or order appealed from; except, that where it directs the sale of perishable property, the court below may order the property to be sold, and the proceeds thereof deposited, to abide the judgment of the appellate court.

SEC. 805. Appeals in the supreme court may be brought to a hearing by either party, upon a notice of three days to the opposite party. Before the argument, each party shall furnish to the other a copy of his points, and authorities, and file one copy thereof with the clerk.

SEC. 806. When judgment is rendered upon the appeal, it shall be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed, or the order appealed from is entered. In case of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment roll, and enter a minute of the judgment of the supreme court on the docket against the original entry. In cases of appeal from an order, the clerk shall enter at length in the record of the court the certificate received, and minute against the entry of the order appealed from a reference to the certificate, with a brief statement that such order had been affirmed, reversed, or modified, as the case may be, by the supreme court, on appeal.

CHAPTER III.

APPEALS TO THE DISTRICT COURT FROM THE PROBATE COURT.

Sec. 307. In what cases taken.

308. When to be taken.

309. Hearing.

SEC. 307. An appeal may be taken from a probate court to the district court of the district in which the probate court is held, in the following cases: First. From an order or decree admitting a will to probate, or refusing the same. Second. From an order setting apart property, or making an allowance for the widow or children. Third. From an order granting letters testamentary, or of administration, or appointing a guardian of an infant, or of an insane person, or of a person incompetent to manage his own property, or refusing to grant such letters, or to make such appointment, or making such letters or appointment. Fourth. From an order directing the sale or conveyance of real property. Fifth. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or by which such allowance or direction is refused. Sixth. From an order made on the settlement of an executor, administrator, or guardian. Seventh. And from any other final judgment or order made by said court in any case, civil or criminal.

SEC. 308. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

SEC. 309. Appeals from the probate court shall be brought to a hearing at the earliest period practicable. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

CHAPTER IV.

APPEALS TO THE DISTRICT COURTS FROM JUSTICES' COURTS.

Sec. 310. How taken and tried.

311. When heard on statement of case, new trial, dismissed, judgment.

SEC. 310. Judgments in all civil cases rendered by justices

may be reviewed by the district court. When the appeal is taken on questions of law alone, it shall be heard on a statement of the case prepared as prescribed in title nine of this act. When the appeal is taken on questions of fact, the action shall be tried anew in the district court, and either party may, on such trial, demand a jury.

Sec. 311. Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, or confirm, or modify, any or all of the proceedings subsequent to or dependent upon said judgment, and may, if necessary or proper, order a new trial. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed.

TITLE X.

CHAPTER I.

OF WRITS OF ERROR.

Sec. 312. Judgment, etc., re-examined on writ of error.

313. Time for prosecution of writ, proviso.

314. When deemed issued.

315. Notice to defendant in error, form of.

316. How served, return of.

317. Transcript of, what to contain.

318. Assigning errors and filing joinders.

319. Judgment, etc., complained of, may be affirmed or reversed.

320. Additional undertaking to pay judgment.

321. Undertaking for writ of error, form of.

322. Death of party after filing undertaking.

323. Prosecution of writ of error, reversal of judgment.

324. Not to affect title of property sold.

325. Supreme court, decision of.

326. Questions of law on special verdicts, adjourned to the supreme court.

Sec. 312. Every final judgment, order, or decision of a district court, except in chancery, may be re-examined upon a writ of error in the same court, for error in fact; in the supreme court, for error in law.

Sec. 313. Every such writ shall be prosecuted within six months, and not after. But if the party entitled to have such

writ shall be absent from the territory, and shall not have been personally served with process, nor appeared to the action, or if such party be an infant, or married woman, or imprisoned, or insane, then such writ may be prosecuted within two years from the removal of such disability, and not after: *Provided*, That the absence from the territory shall not entitle the party to a longer time than five years; the time limited shall include the day on which the judgment is rendered, or the order or decision is made, or on which the disability ceases.

SEC. 314. A writ of error shall be deemed to have issued on the day on which the plaintiff in error shall file in the office of the clerk of the district court, where the record is, a written undertaking, executed by two sureties, to be approved by the clerk, for the payment of all the costs of such proceeding; and it shall not be necessary, in any stage of the proceedings, actually to sue out the writ of error.

SEC. 315. On the filing of such undertaking, the clerk shall issue a notice to the defendant in error, under the seal of the court, specifying the court in which, and the time when he is to appear to protect his interests; and if the præcipe direct the writ of error to be made returnable to the supreme court, he shall send thither a transcript of the record under the seal of the court; such notice may be, as nearly as applicable, in the following form:

TERRITORY OF IDAHO, }
County of ———. }

To C—— D——: You are hereby notified that A. B. has sued out a writ of error from the supreme court, to reverse the decision of the district court of said county, given in your favor against the said A. B. at the ——— term of 18—, and unless you appear in the said supreme court on the ——— Monday of ———, 18—, the cause will be heard in your absence.

Witness the seal of the district court, the ——— day of ———, 18—.

[Seal.]

E. F., Clerk.

SEC. 316. The notice may be served on the defendant in error, or his attorney of record, by any sheriff within his county, and shall be by delivering him a copy thereof, or it may be served by any other disinterested person; and the return of the sheriff indorsed thereon, or the affidavit of such other disinterested person, shall be evidence thereof, and if served ten days before the return day, the cause may be heard

at that term. If returned not found, the court of error may make such order for the service or publication of notice, as shall appear most likely, in the particular case, to convey knowledge of the proceeding to the defendant in error, and may then proceed as if the notice had been personally served.

SEC. 317. The transcript shall contain a copy of the writ and return, the pleadings, the journal entries and the bills of exception, the exception and return, and such other matters as the court or judge shall have ordered to be made a part of the record. Either party may have a *certiorari* to supply any diminution of the record.

SEC. 318. The court of error may affix the time for assigning errors and filing joinders. If errors in law be assigned, no joinders shall be necessary; one or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse or confess, and avoid the facts assigned for error, and a separate issue shall be made on each.

SEC. 319. The judgment or other matter complained of, may be affirmed, or may be reversed or set aside, in whole or in part, or may be modified, or a different judgment or order may be substituted for that complained of, and the cause may be remitted to the district court for such further proceedings as the supreme court by mandate shall direct. Execution may issue from the supreme court, or its judgments may be executed by the district court, on a mandate for that purpose.

SEC. 320. If the undertaking for costs contain an additional undertaking to pay the judgment, if affirmed, and damages, or any new and modified judgment that may be given against the plaintiff in error, then all further proceedings, by way of executing the judgment, shall forthwith cease until the further order of the court of error. In such case, if the judgment be affirmed or modified, or any new judgment be given against the plaintiff in error, damages may be awarded to the defendant in error, not exceeding ten per cent. upon the amount of the judgment, exclusive of interests and costs, if it manifestly appears that the proceeding was without probable cause and merely for delay. And in cases where judgment is rendered against the plaintiff in error, judgment shall also be rendered against the sureties in the undertaking, to the extent of their liability, and execution shall issue against them accordingly.

SEC. 321. The undertaking for a writ of error may be in the following form:

A— B— } District Court, County of —; Judgment
vs. }
C— D— } at — term, 18—.

We promise to pay all costs that may be awarded against A—— B—— on his writ of error in this cause, (and also the judgment, if affirmed) and the damages, or any new or modified judgment that may be given against him.

SEC. 322. If, after the undertaking be filed, either party shall die, or, being a single woman, shall marry, the proper persons may, on motion, be made parties, and the causes shall proceed to judgment.

SEC. 323. Any persons who may be a party or privy in any judgment, order, or decision, may prosecute a writ of error to reverse the same, and the reversal shall enure to the benefit of all parties and privies therein; and no other party or privy shall afterwards prosecute a writ of error for the same cause.

SEC. 824. The reversal of a judgment, order or decision, shall not affect the title of property sold upon an execution issued upon such judgment, order or decision, if such property be purchased at the sale by a stranger; but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery thereof, and the court may award restitution or render such other judgment as justice shall require.

Sec. 825. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

SEC. 326. Whenever, on the trial of an action at law, in the district court, it shall be found to turn on important or doubtful principles of law, the court may direct a special verdict to be found; and in all cases the parties may agree upon the facts—and such agreement, in writing, signed by the parties or their attorneys, shall be made part of their record; and all questions of law arising on special verdicts, agreed cases, motions for new trial and all others in any manner arising in the district courts, in law or equity, may be adjourned into the supreme court for decision; and the supreme court may give judgment, or remand the cause, or make any order according to the law and justice of the case.

TITLE XI.

MISCELLANEOUS PROCEEDINGS.

CHAPTER I.

PROCEEDINGS AGAINST JOINT DEBTORS.

SEC. 327. How those not served may be bound by judgment.

328. Summons to show cause.

330. Answer and defense.

331. When defendant denies liability.

332. Issues formed, how tried.

SEC. 327. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section thirty-two, those who were not originally served with the summons and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

SEC. 328. The summons, as provided in the last section, shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner and returnable within the same time as the original summons. It shall not be necessary to file a new complaint.

SEC. 329. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

SEC. 330. Upon such summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitation.

SEC. 331. If the defendant in his answer deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

SEC. 332. The issue formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT WITHOUT ACTION.

SEC. 333. May be entered.

334. How entered.

335. To be filed.

SEC. 333. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter of this act.

SEC. 334. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect: First. It shall authorize the entry of judgment for a specified sum. Second. If it be for money due or to become due, it shall state concisely the fact out of which it arose, and shall show that the sum confessed therefor is justly due or to become due. Third. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

SEC. 335. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it, and enter in the judgment book, a judgment of such court for the amount confessed, with ten dollars costs; the statement and affidavit, with the judgment endorsed, shall thereupon become the judgment roll.

CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

SEC. 336. How controversy may be submitted.

Sec. 337. Judgment, how entered.
338. How enforced.

SEC. 336. Parties to a question in difference which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

SEC. 337. Judgment shall be entered in the judgment book, as in other cases, but without costs, for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

SEC. 338. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER IV.

OF ARBITRATIONS.

- Sec. 339. What may be submitted.
340. How submission made, revocation of, award, how enforced.
342. Power of arbitrators.
343. Proceedings of arbitrators.
344. Award, how made, effect of.
345. In what case vacated.
346. In what case modified.
347. Appeal.
348. Submission revoked, amount recoverable.

SEC. 339. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

SEC. 340. The submission to arbitration shall be in writing, and may be to one or more persons.

SEC. 341. It may be stipulated in the submission, that it

be entered as an order of the district court, for which purpose it shall be filed with the clerk of such court in the district where the parties, or one of them reside. The clerk shall thereupon enter in his register of actions a note of submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered, the submission shall not be revoked except by the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court, in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

SEC. 342. Arbitrators shall have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

SEC. 343. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting, they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

SEC. 344. The award shall be in writing, and signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit, showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

SEC. 345. The court on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion: First. That it was procured by corruption or fraud. Second. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing, or refusing to hear pertinent evidence, or otherwise acted improperly, in a manner in which the rights of the party were prejudiced. Third. That the arbitrators exceeded their powers in making their award; or, that they refused, or impro-

perly omitted to consider a part of the matter submitted to them ; or, that the award is indefinite, or cannot be performed.

SEC. 346. The court may, on motion, modify or correct the award, where it appears : First. That there was a miscalculation in figures, upon which it was made, or that there is a mistake in the description of some person or property therein. Second. When a part of the award is upon matters not submitted, which can be separated from other parts, and does not affect the decision on the matter submitted. Third. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

SEC. 347. The decision upon the motion shall be subject to appeal or writ of error, in the same manner as an order which is subject to appeal or writ of error in civil actions ; but the judgment entered before a motion is made shall not be subject to appeal or writ of error.

SEC. 348. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER V.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR A PART OF AN ACTION.

SEC. 349. The defendants may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk shall enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn, and shall not be given in evidence ; and if the plaintiff fail to recover a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

TITLE XII.

OF WITNESSES AND THEIR MANNER OF OBTAINING EVIDENCE.

CHAPTER I.

OF WITNESSES.

Sec. 350. Religious belief not to disqualify, interest when to disqualify.

351. Test of.

352. Who shall not be witnesses.

353. Husband and wife cannot be witnesses against each other.

354. Attorney not to disclose communication of client.

355. Clergyman not to disclose confession.

356. Physician not to disclose information given by patient.

357. Public officers not to disclose, etc.

358. Judge or juror may be witness.

359. Interpreters.

Sec. 350. All persons, without exception, otherwise than as specified in this chapter of this act, may be witnesses in any action or proceeding. No person offered as a witness shall be excluded on account of his opinions on matters of religious belief, nor shall any person be excluded on account of his interest in the event of the action or proceedings, except in the following cases: First. When he is a party to the action or proceeding, or the action or proceeding is prosecuted or defended for his immediate benefit. Second. When his interest is a present, certain, and vested interest.

Sec. 351. The true test of the interest of a person, which shall render him incompetent as a witness, shall be, that he will gain or lose by the direct legal operation and effect of the judgment, or that the record of the judgment, will be legal evidence for or against him in some other action; but nothing in this or the last section, shall prevent a party calling as a witness the adverse party to the action, or a person whose interest is adverse, nor a party being a witness in the case mentioned in section three hundred and eighty.

Sec. 352. The following persons shall not be witnesses: First. Those who are of unsound mind at the time of their production for examination. Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Third. Chinamen or persons having one-half or more of China blood; Indians, or persons having one-half or more of Indian blood,

and negroes, or persons having one-half or more of negro blood, in an action or proceeding to which a white person is a party. Fourth. Persons against whom judgment has been rendered upon a conviction for felony, unless pardoned by the governor, or such judgment has been reversed on appeal.

SEC. 353. A husband shall not be a witness for or against his wife, nor a wife a witness for or against her husband; nor can either, during the marriage or after, be, without the consent of the other, examined as to any communication made by one to the other, during the marriage. But this exception shall not apply to an action or proceeding by one against the other.

SEC. 354. An attorney or counsellor shall not, without the consent of his client, be examined as a witness to any communication made by the client to him, or his advice given thereon in the course of professional employment.

SEC. 355. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

SEC. 356. A licensed physician or surgeon shall not, without the consent of his patient, be examined as a witness as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

SEC. 357. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

SEC. 358. The judge himself, or any juror may be called as a witness by either party; but in such case it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge and jury.

SEC. 359. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

CHAPTER II.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES, AND THEIR RIGHTS AND DUTIES.

SEC. 360. Subpoena, *duces tecum*, when not required to attend.

- Sec. 361.** Subpoena, how issued and how served.
364. Person present need not be subpoenaed.
365. Duty of witness.
366. What questions witness must answer.
368. Penalty for disobedience to subpoena.
369. Failure to attend may be arrested.
370. Confinement in jail, testimony, how taken.
373. Witness exonerated from arrest.
374. Liability of officer making arrest.

Sec. 360. A subpoena may require not only the attendance of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring any books, documents or other things under his control, to be used as evidence. No person shall be required to attend as a witness before any court, judge, justice, or any other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Sec. 361. The subpoena shall be issued as follows: First. To require attendance before a court, or at trial of an issue therein; it shall be issued in the name and under the seal of the court before which the attendance is required, or in which the issue is pending. Second. To require attendance out of court, before a judge, justice or any other officer authorized to administer oaths or take testimony in any matter, under the laws of this territory, it shall be issued by the judge, justice or other officer before whom the attendance is required. Third. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or county, it may be issued by any judge or justice of the peace, in places within their respective jurisdictions, with like power to enforce attendance, and upon certificate of contumacy to said court, to punish for contempt of their process, as such judge or justice could exercise if the subpoena directed the attendance of the witness before their courts in a matter pending therein.

Sec. 362. The service of a subpoena shall be made by delivering a copy thereof to the witness, or by leaving such copy with some suitable person at the place of his abode, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service may be made by any white male person over eighteen years of age; but when made by any other person than an officer authorized to serve process, it shall be proved by the affidavit of the person making it.

SEC. 363. If a witness be concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any court or judge or any officer issuing the subpoena may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena, and the sheriff shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

SEC. 364. A person present in court, or before a judicial officer, may be required to testify, in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

SEC. 365. It shall be the duty of a witness, duly served with a subpoena, to attend at the time appointed, with any papers under his control required by the subpoena, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

SEC. 366. A witness shall answer questions legal and pertinent to the matter in issue, though his answers may establish a claim against himself; but he need not give answer which shall have a tendency to subject him to punishment for a felony, nor need he give answer which shall have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed; but a witness shall answer as to the fact of his previous conviction for felony.

SEC. 367. Disobedience to a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court, or officer issuing the subpoena, or requiring the witness to be sworn; and if the witness be a party, his complaint may be dismissed, or his answer stricken out.

SEC. 368. A witness disobeying a subpoena, shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damage may be recovered in a civil action.

SEC. 369. In case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness and bring him before the court or officer where his attendance is required.

SEC. 370. If the witness be a prisoner, confined in jail or prison within this territory, for any other cause than a sentence for felony, an order for his examination in the prison upon deposition, or for his temporary removal and production

before a court or officer for the purpose of being orally examined, may be made as follows: First. By the court itself, in which the action or special proceeding is pending. Second. By a judge of the supreme court, district court, or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

SEC. 371. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

SEC. 372. If the witness be imprisoned in the county where the action or proceeding is pending, and for a cause other than a sentence for a felony, his production may be required. In all other cases, his examination, when allowed, shall be taken upon deposition.

SEC. 373. Every person who has been in good faith served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other person, in a cause where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest, in a civil action, while going to the place of attendance, necessarily remaining there, and returning therefrom.

SEC. 374. The arrest of a witness, contrary to the last section, shall be void; but an officer shall not be liable to the party for making the arrest, in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating: First. That he has been served with a subpoena to attend as a witness before a court, officer or other person; specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued. Second. That he has not been thus served by his own procurement with the intention of avoiding an arrest. Third. That he is, at the time, going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena. The affidavit may be taken by the officer, and shall exonerate him from liability for discharging the witness when arrested.

CHAPTER III.

OF THE EXAMINATION OF PARTIES TO AN ACTION OR PROCEEDING, AND OF PERSONS FOR WHOSE IMMEDIATE BENEFIT SUCH ACTION OR PROCEEDING IS PROSECUTED OR DEFENDED.

SEC. 375. Discovery under oath, how had.

Sec. 376. Party may be examined at instance of adverse party.

377. May be rebutted.

378. Party refusing to testify judgment go against him.

379. Examination of witness in his own behalf.

380. When parties may be witness in own behalf.

Sec. 375. No action to obtain a discovery under oath, in aid of the prosecution or defence of another action or proceeding, shall be allowed, nor shall any examination of a party be had on behalf the adverse party, except in the manner provided in this act.

Sec. 376. A party to an action or proceeding may be examined as a witness, at the instance of the adverse party or of any one of several adverse parties; and for that purpose may be compelled, in the same manner and subject to the same rule of examination, as any other witness, to testify at the trial, and he may be examined on a commission.

Sec. 377. The examination of a party thus taken may be rebutted by adverse testimony.

Sec. 378. If a party refuse to attend and testify at the trial or to give his deposition before trial, or upon a commission, when required, his complaint, answer or reply may be stricken out and judgment taken against him; and he may be, also, in the discretion of the court, proceeded against as in other cases for contempt.

Sec. 379. A party examined by an adverse party, as in this chapter provided, may be examined on his own behalf in respect to any matter pertinent to the issue; but if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto, or discharge, when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf, in respect to such new matter, and shall be so received.

Sec. 380. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness, in the same manner and subject to the same rules of examination, as if he were named as a party.

Sec. 381. Parties may be witnesses on their own behalf, when the action is brought for the settlement of or in relation to the business and accounts of a co-partnership then existing, or which had previously existed between them, to prove vouchers or items of account under one hundred dollars.

CHAPTER IV.

ON AFFIDAVITS.

Sec. 382. How taken.

383. In another state or territory.

384. In a foreign country.

385. How certified when taken out of territory.

SEC. 382. An affidavit to be used before any court, judge, or officer of this territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this territory.

SEC. 383. An affidavit in another state or territory of the United States, to be used in this territory, shall be taken before a commissioner appointed by the governor of this territory to take affidavits and depositions in such other state or territory, or before the judge of a court of record having a seal.

SEC. 384. An affidavit taken in a foreign country, to be used in this territory, shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record, having a seal, in such foreign country.

SEC. 385. When an affidavit is taken before a judge of a court in another state or territory, or a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court under the seal thereof.

CHAPTER V.

DEPOSITIONS TAKEN IN THIS TERRITORY.

Sec. 386. In what cases may be taken, and how.

388. Manner of examination, and transmission.

389. May be used by either party.

SEC. 386. The testimony of a witness of this territory may be taken by deposition in an action, at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen

therein, in the following cases: First. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended. Second. When the witness resides out of the county in which his testimony is to be used. Third. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required. Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend.

SEC. 387. Either party may have the deposition taken of a witness in this territory, before any judge or clerk, or any justice of the peace, or notary public in this territory, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of affidavit, showing that the case is one mentioned in the last section, at any time after the service of summons, or the appearance of defendant, or during the forty days immediately after the service of the summons by publication has been completed, and at any thereafter, when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending. Such notice shall be at least five days, in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless for a cause shown, a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

SEC. 388. Either party may attend such examination, and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness, and corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, enclosed in an envelope or wrapper, sealed, and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail, or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence or intended absence from the county of the witness, or because he is too infirm to attend,

proof by affidavit or oral testimony shall be made at the trial, that the witness continues absent, or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may be also read in case of the death of the witness.

SEC. 389. When a deposition has been once taken, it may be read in any stage of the same action or proceeding by either party, and shall then be deemed the evidence of the party reading it.

CHAPTER VI.

OF DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

SEC. 390. When may be, and how taken.

391. Settling interrogatories.

393. Commission, what to contain.

394. Postponement of trial for non-return of.

SEC. 390. The testimony of a witness out of the territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, at any time after a question of fact has arisen therein.

SEC. 391. The deposition of a witness out of this territory shall be taken upon commission issued from the court, under the seal of the court, upon an order of the judge, or court, or probate judge, on the application of either party, upon five days previous notice to the other. It shall be issued to the person agreed upon by the parties, or if they do not agree, to any judge or justice of the peace selected by the officer granting the commission, or to a commissioner appointed by the governor of this territory to take affidavits and depositions in other states.

SEC. 392. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or, when the parties agree to that mode, the examination may be without written interrogatories.

SEC. 393. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories, in respect to the question in dispute; and to certify the deposition to the court, in a sealed

envelope, directed to the clerk, or other person designated or agreed upon, and forward to him by mail or other usual channel of conveyance.

SEC. 394. A trial, or other proceeding, shall not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

CHAPTER VII.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

SEC. 395. Testimony, how perpetuated.

396. Manner of proceeding.

398. Examination and deposition.

399. Affidavit, effect of.

400. Deposition, when to be used as evidence.

SEC. 395. The testimony of a witness may be taken and perpetuated as provided in this chapter of this act.

SEC. 396. The applicant shall produce to a district judge, or to a probate judge, an affidavit stating: First. That the applicant expects to be a party to an action in a court of this territory, and in such case, the name or names of the person or persons whom he expects will be adverse parties; or, Second. That the proof of some fact or facts is necessary to perfect the title to property in which he is interested, or to establish marriage descent, heirship, or any other matter which may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated, he may not know the parties to the suit; and, Third. The name or names of the witness or witnesses to be examined at his or their place of residence and a general outline of the facts expected to be proved. The judge to whom such petition is presented shall make an order allowing the examination and prescribing the notice to be given, which notice, if the parties are known and reside in this territory, shall be personally served on them; and if unknown, such notice shall be served on the clerk of the county where the property to be affected by such evidence is situated, and a notice thereof published in some newspaper to be designated by the judge making the order.

SEC. 397. Upon proof of service of the notice, as provided

in the last section, it shall be the duty of the judge before whom the depositions are ordered to be taken, to proceed to take the depositions of the witnesses named in such petition, upon the facts therein set forth; and the taking of the same may be continued from time to time, in the discretion of the judge.

SEC. 398. The examination shall be by question and answer, unless the parties otherwise agree. The deposition, when taken, shall be carefully read to, and subscribed by the witness, then certified by the judge, and immediately thereafter filed in the office of the clerk of the district court of the county where the same was taken; together with the order for the examination, the petition on which the same was granted, and the proof of service of notice.

SEC. 399. The affidavits or proof filed with the deposition, or certified copies thereof, shall be *prima facie* evidence of the facts stated therein.

SEC. 400. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the fact which such depositions prove, or tend to prove, upon proof of the death or insanity of the witness or witnesses, or of his or their inability to attend the trial, by reason of age, sickness, or settled infirmity, the deposition or depositions, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination.

CHAPTER VIII.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SEC. 401. Who authorized.

402. How administered.

403. Affirmation, form of.

SEC. 401. Every court of this territory, every judge or clerk of any court, every justice of the peace, and every notary public, and every officer authorized to take testimony, or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

SEC. 402. When a person is sworn who believes in any

other christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Sec. 403. Any witness who desires it, may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between —— and ——, shall be the truth, the whole truth, and nothing but the truth." Assent to this affirmation shall be made by the answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

CHAPTER IX.

INSPECTION OF DOCUMENTS, AND MISCELLANEOUS PROVISIONS AS TO RECORDS AND WRITINGS.

Sec. 404. Court may order party to allow.

405. Evidence of the contents of a writing.

406. Alterations in writing to be accounted for.

407. Judicial record how proved.

409. Judicial record of foreign country, how proved.

410. Copy of when admissible.

411. Printed volumes of statutes to be admitted as evidence.

412. Seal of court, how impressed.

Sec. 404. Any court in which an action is pending, or a judge thereof, or a probate judge, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any book, document, or paper in his possession, or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence; or, if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

Sec. 405. There shall be no evidence of the contents of a writing other than the writing itself, except in the following cases: First. When the original has been lost or destroyed, in

which case proof of the loss or destruction shall first be made. Second. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it, after reasonable notice. Third. When the original is a record or other document in the custody of a public officer. Fourth. When the original has been recorded, and a certified copy of the record is made evidence by statute. Fifth. When the original consists of numerous accounts, or other documents, which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

SEC. 406. The party producing a writing as genuine, which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

SEC. 407. A judicial record of this territory or of the United States may be proved by the production of the original or a copy thereof, certified by the clerk or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

SEC. 408. The records and judicial proceedings of the courts of any state of the United States may be proved or admitted in the courts of this territory, by the attestation of the clerk and the seal of the court annexed (if there be a seal), together with a certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form.

SEC. 409. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed (if there be a clerk and seal), or by the legal keeper of the record, with the seal of his office annexed (if there be a seal), to be a true copy of such record, together with a certificate of a judge of the court that the person making the certificate is the clerk of the court or legal keeper of the record—and in either case that the signature is genuine and the certificate in due form; and also, together with the certificate of the minister or ambassador of the United States, or of a consul of the United States, in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk, or other legal keeper of the record.

SEC. 410. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof: First. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it. Second. That such original was in the custody of the clerk of the court or other legal keeper of the same; and, Third. That the copy is duly attested by a seal, which is proved to be the seal of the court where the record remains, if it be the record of a court; or (if there be no such seal, or if it be not a record of a court) by the signature of the legal keeper of the original.

SEC. 411. Printed copies, in volumes of statutes, codes or other written law, enacted by any other state or territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such state, territory or government, shall be admitted by the courts and officers of this territory, on all occasions, as presumptive evidence of such laws.

SEC. 412. A seal of a court or public officer, when required to any writ, or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer or any other substance, and then attached to the writ, process or proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

TITLE XIII.

OF THE WRIT OF CERTIORARI AND OF MANDAMUS.

CHAPTER I.

THE WRIT OF CERTIORARI, OR REVIEW.

SEC., 413. Denomination.

414. By what courts, and in what cases granted.

415. Application for, how made.

416. To whom to be directed.

417. Writ, what to contain.

419. How served.

420. Review upon extent of.

421. Return of, judgment.

SEC. 422. Copy of to be transmitted.

423. Judgment roll, appeal.

SEC. 413. The writ of *certiorari* may be denominated the writ of review.

SEC. 414. This writ may be granted on application by any court of this territory, except a justice's court. The writ shall be granted in all cases where an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, and there is no appeal, nor, in the judgment of the court, any other plain, speedy and adequate remedy.

SEC. 415. The application shall be made on affidavit, by the party beneficially interested, and the court may require a notice of application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

SEC. 416. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, shall return the writ, with the transcript required.

SEC. 417. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceeding (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

SEC. 418. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the court; but if omitted, the power of the inferior court or or officer shall not be suspended, nor the proceedings stayed.

SEC. 419. The writ shall be served in the same manner as a summons in a civil action; except when otherwise expressly directed by the court.

SEC. 420. The review on this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

SEC. 421. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as shall attend for that purpose, and may there-

upon give judgment, either affirming or annulling, or modifying the proceedings below.

SEC. 422. A copy of the judgment signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

SEC. 423. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner, and upon the same terms, as from a judgment in a civil action.

CHAPTER II.

THE WRIT OF MANDATE OR MANDAMUS.

SEC. 424. Denomination.

425. By what court and in what cases may be issued.

427. Alternative or peremptory defined.

428. When alternative or peremptory to be issued, notice of application, answer to writ.

430. When court may order trial by jury.

431. Objections to sufficiency of answer.

432. New trial, other party may move for.

433. Duty of clerk to transmit a verdict, argument of application.

435. Judgment and execution.

436. Writ how served.

437. Penalty for disobeying peremptory mandamus.

SEC. 424. The writ of mandamus may be denominated the writ of mandate.

SEC. 425. It may be issued in any court in this territory, except by justice's court, to any inferior tribunal, corporation, board or person, to compel the performance of an act, which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

SEC. 426. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy, in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

SEC. 427. The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted, and a return day shall be inserted.

SEC. 428. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of application, when given, shall be at least ten days. The writ shall not be granted by default. The case shall be heard by the court, whether the adverse party appear or not.

SEC. 429. On the return day of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served, may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

SEC. 430. If an answer be made, which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained, in case they find for him.

SEC. 431. On the trial, the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

SEC. 432. If either party be dissatisfied with the verdict of the jury, he may move for a new trial, upon a statement prepared as provided in section one hundred and ninety-five. The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried, either in term or vacation. If a new trial be

granted, the jury shall, within five days thereafter, unless the parties agree on a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

SEC. 433. If no notice of a new trial be given, or if given, be denied, the clerk, within five days after the rendition of the verdict or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

SEC. 434. If no answer be made, the case shall be heard on the papers of the applicant. If answer be made, which does not raise a question such as is mentioned in section four hundred and thirty, but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying. If the answer or answer and reply raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the court shall proceed to hear or fix a day for hearing the arguments of the case.

SEC. 435. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, as found by the jury, or as may be determined by the court or referees, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

SEC. 436. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court.

SEC. 437. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appears to the court that any member of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any order necessary and proper for the complete enforcement of the writ. If a fine be imposed upon a judge or officer who draws a salary from the territory or county, a certified copy of the order shall be forwarded to the auditor or county treasurer, as the case may be, and the amount thereof may be retained from the salary of

such judge or officer. Such judge or officer, for his wilful disobedience, shall also be deemed guilty of a misdemeanor in office.

TITLE XIV.

ON CONTEMPTS AND THEIR PUNISHMENTS.

- Sec. 438.** Contempts, what constitutes.
439. When punishable summarily.
440. Attachment for commitment for, when issuable.
441. Bail.
442. Duty of sheriff.
443. Discharge from arrest.
444. How effected.
445. Return of warrant.
446. Penalty if found guilty.
447. Same, for omission to perform certain acts within power.
448. Indictment.
449. Proceeding when defendant does not appear.
450. Duty of officer having defendant in custody.
451. Judgment to be final, punishment.

Sec. 438. The following acts of omissions shall be deemed contempts: First. Disorderly, contemptuous or insolent behavior toward the judge, whilst holding court or engaged in his judicial duties at chambers, or toward referees or arbitrators, whilst sitting on a reference or arbitration, tending to interrupt the due course of a trial, reference or arbitration, or other judicial proceeding. Second. A breach of the peace, boisterous conduct or violent disturbance, in presence of the court or its immediate vicinity, tending to interrupt the due course of a trial or other judicial proceeding. Third. Disobedience or resistance to any lawful writ, order, rule or process, issued by the court or judge at chambers. Fourth. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness. Fifth. Rescuing any person or property in the custody of an officer, by virtue of an order or process of such court or judge at chambers.

Sec. 439. When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily—for which an order shall be

made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court, or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

SEC. 440. When a contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer; or without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer or such notice or order to show cause.

SEC. 441. Whenever a warrant of attachment is issued, pursuant to this chapter of this act, the court or judge shall direct, by an indorsement on each warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

SEC. 442. Upon executing the warrant of attachment, the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

SEC. 443. When a direction to let the person arrested to bail is contained in the warrant of attachment or indorsed thereon, he shall be discharged from the arrest, upon executing and delivering to the officer, at any day before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant, and abide the order of the court or judge thereupon; or they will pay, as may be directed, the sum specified in the warrant.

SEC. 444. The officer shall return the warrant of arrest and the undertaking, if any, received by him from the person arrested, by the return day specified therein.

SEC. 445. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time if necessary.

SEC. 446. Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded

against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

SEC. 447. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment.

SEC. 448. Persons proceeded against according to the provisions in this chapter of this act, shall also be liable to indictment for the same misconduct, if it be an indictable offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

SEC. 449. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of the damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

SEC. 450. Whenever by the provisions of this chapter of this act, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court or judge, the inability from illness or otherwise of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

SEC. 451. The judgment and order of the court or judge made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or imprisonment, but no fine shall exceed the sum of five hundred dollars, and no imprisonment shall exceed the period of five days, except as provided in section four hundred and forty-seven.

TITLE XV.

OF COSTS.

- Sec. 452.** Compensation of attorney ; prevailing party allowed.
453. Docket fee, proviso.
454. When allowed, of course, to plaintiff.
455. When several actions on one bond.
456. To whom allowed.
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Sec. 452. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the parties ; but there shall be allowed to the prevailing party in any action in the supreme court, district courts, and probate courts, his costs and necessary disbursements in the action, or special proceedings in the nature of the action.

Sec. 453. There shall be taxed and collected on the commencement of each action or proceeding in the nature of an action in the district court, and on each appeal or writ of error had to or from said court, the sum of ten dollars, which shall be termed a docket fee, which shall be collected by the clerk, and such clerk shall pay over the same to the judge of his district and take and file and preserve his receipt therefor : *Provided*, That in all actions, appeals or other proceedings now pending, or that may be commenced before notice to said clerk of this law, he may collect said fee at any time before said cases are tried and determined, or otherwise disposed of, or it may be collected with the other costs of the suit or proceeding.

Sec. 454. Costs shall be allowed, of course, to the plaintiff upon a judgment in his favor in the following cases : First. In an action for the recovery of real property. Second. In an action to recover possession of personal property when the value amounts to one hundred dollars or over ; such value

shall be determined by the jury, court or referee by whom the action is tried. Third. In an action for the recovery of money or damages where the plaintiff recovers one hundred dollars or over. Fourth. In a special proceeding in the nature of an action.

SEC. 455. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the party proceeded against in the other actions were at the commencement of the previous action openly within this territory; but the disbursements of the plaintiff shall be allowed to him in each action.

SEC. 456. Costs shall be allowed, of course, to the defendant upon a judgment in his favor in the action mentioned in section four hundred and fifty-four, and in a special proceeding in the nature of an action.

SEC. 457. In other actions than those mentioned in section four hundred and fifty-four, costs may be allowed or not; and if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property, when the value of the property is less than one hundred dollars.

SEC. 458. When there are several defendants in the actions mentioned in section four hundred and fifty-four, not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgments in their favor.

SEC. 459. In the following cases the costs of an appeal, or writ of error, shall be in the discretion of the court: First. When a new trial is ordered. Second. When the judgment is modified.

SEC. 460. The fees of referees shall be ten dollars to each for every day spent in the business of the reference; and the parties shall not agree upon any other rate of compensation, nor shall any other rate of compensation be allowed by the courts.

SEC. 461. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the

postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

SEC. 462. When, in action for the recovery of money only, the defendant alleges in his answer that, before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

SEC. 463. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or person expressly authorized by statute, costs may be recovered as in an action by or against a person prosecuting or defending in his own right, but such costs shall, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defense.

SEC. 464. When the decision of a court of inferior jurisdiction, in a special proceeding, is brought before a court of higher jurisdiction for a review, in any other way than by appeal, the same costs shall be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

SEC. 465. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court within two days after the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

SEC. 466. The clerk shall include, in the judgment entered up by him, the costs, per centage allowed, and any interest on the verdict from the time it was rendered.

SEC. 467. When the plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insuffi-

cient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

SEC. 468. Each of the sureties on the undertaking mentioned above, shall annex to the same an affidavit that he is a resident within the county, and is worth double the amount specified in the undertaking, over and above all just debts and liabilities, exclusive of property exempt from execution.

SEC. 469. After the lapse of thirty days from the service of notice that security is required, or an order for new and additional security, upon proof thereof, and that no undertaking as required has been filed, the court may order the action to be dismissed.

TITLE XVI.

OF MOTIONS, ORDERS, SERVICE OF PAPERS, AND MISCELLANEOUS PROVISIONS.

SEC. 470. Motions, etc., defined.

471. Where to be made, notice of.

473. May be transferred.

474. Service of papers, how made.

476. When served by mail.

478. When defendant deemed to have appeared.

479. Service of, after appearance.

480. Successive actions on same contract.

481. When may be consolidated.

482. Action to settle adverse claim.

483. Register of action.

484. Referees, majority may act.

485. Time, how computed.

486. Paper without the title of the action.

SEC. 470. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

SEC. 471. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district.

SEC. 472. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing; otherwise ten days; but the court or judge, or probate judge, may prescribe a shorter time.

SEC. 473. When a notice of motion is given, or an order to show cause is made returnable before a judge out of court, and at the time fixed for the motion or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge, before whom it might originally have been brought.

SEC. 474. Written notices and other papers, when required to be served on the party or attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title shall be applicable to original or final process, or any proceedings to bring a party into contempt.

SEC. 475. The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows: First. If upon an attorney, it may be made during his absence from his office by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the post office, directed to such attorney. Second. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same enclosed in an envelope, into the post office, directed to such party.

SEC. 476. Service by mail may be made where the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

SEC. 477. In case of service by mail, the notice or other paper shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid; and in such case the time of service shall be increased one day for every twenty miles distance between the place of deposit and the place of the address.

SEC. 478. A defendant shall be deemed to appear in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney shall be entitled to notice of all subsequent proceed-

ings of which notice is required to be given. But where a defendant has not appeared, service of notice or paper need not be made upon him, unless he be imprisoned for want of bail.

SEC. 479. When a plaintiff or a defendant who has appeared resides out of the territory and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required shall be upon the attorney, instead of the party, except in subpoenas or writs and other process issued in the suit, and of papers to bring him into contempt.

SEC. 480. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action a new cause of action arise therefrom.

SEC. 481. Whenever two or more actions are pending at one time, between the same parties and in the same court, upon cause of action which might have been joined, the court may order the action to be consolidated into one.

SEC. 482. An action may be brought by one person against another for the purpose of determining an adverse claim which the latter makes against the former, for money or property, upon alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as security.

SEC. 483. The clerk shall keep among the records of the court two registers of actions; one for action at law and the other for proceedings at chancery. He shall enter in them, respectively, the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

SEC. 484. When there are three referees or three arbitrators, all shall meet, but two of them may do any act which might be done by all.

SEC. 485. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

SEC. 486. An affidavit, notice or other paper without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

TITLE XVII.

OF PROCEEDINGS IN CIVIL CASES IN JUSTICES' COURTS.

CHAPTER I.

OF THE PARTIES, AND THE TIME AND PLACE OF COMMENCING ACTIONS IN JUSTICES' COURTS.

SEC. 487. Parties to action.

488. May appear in person or by attorney.

489. Jurisdiction of.

490. Judgment by confession.

491. Jurisdiction by consent of parties.

SEC. 487. The provisions of title one of this act, as to parties to actions, shall be applicable to actions of which a justice's court has jurisdiction.

SEC. 488. Parties in justices' courts may prosecute or defend in person or by attorney; and any person, on the request of a party, may act as his attorney, except that the constable by whom the summons or jury process was served shall not appear or act on the trial in behalf of either party.

SEC. 489. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute.

SEC. 490. Judgment upon confession may be entered up in any justices' court in this territory, specified in the confession.

SEC. 491. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to their residences, or the place where the cause of action arose or the subject matter of the action may exist.

CHAPTER II.

SUMMONS, ARREST, ATTACHMENT, AND CLAIM OF PERSONAL PROPERTY.

SEC. 492. Action how commenced.

493. Guardian, how appointed.

494. Summons, form of.

Sec. 495. Time of service and appearance.**496. How served and by whom.****497. Service by publication.****498. When order for arrest may be indorsed.****500. When defendant may be taken before another justice.****501. Duty of officer making arrest.****503. Defendant under arrest may demand immediate trial or bail.****504. How defendant may obtain adjournment.****506. Attachment, when may be issued.****507. Prerequisite to issuance.****508. Writ of, form.****509. Previous provisions made applicable.****510. Plaintiff may claim delivery of property.****511. Delivery, how claimed.****512. Order for.****513. Duty of officer in the premises.****514. Excepting to sureties.****515. How defendant may reclaim property.****516. Justification of sureties of defendant, duty of officers as to hidden property.****518. Disposition of property by officer.****519. Proceedings in case property is claimed by third party.****520. Return of order.****521. Qualification of sureties.****522. Justification of sureties how conducted.****523. Sureties sufficient, proceedings of Justice.**

Sec. 492. Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleading of the parties without summons; in the latter case, the action shall be deemed commenced at the time of appearance.

Sec. 493. When a guardian is necessary, he shall be appointed by the justice as follows: First. If the infant be plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed, and to be responsible for costs, if he fail in the action, shall be first filed with the justice. Second. If the infant be defendant, the guardian shall be appointed at the time the summons is returned, or before the pleadings. It shall be the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed; otherwise, the justice may appoint any suitable person who gives such consent.

SEC. 494. The summons shall be addressed to the defendant by name, or if his name be unknown, by a fictitious name; and shall summon him to appear before the justice at his office, naming its township or city, and at a time specified therein, to answer the complaint of the plaintiff, for a cause of action therein described, in general terms, sufficient to apprise the defendant of the nature of the claim against him; and in an action for money or damages, shall state the amount for which the plaintiff will take judgment, if the defendant fail to appear and answer. It shall be subscribed by the justice before whom it is returnable.

SEC. 495. The time mentioned in the summons for the appearance of the defendant and the time of service shall be as follows: First. When the summons is accompanied with an order to arrest the defendant, it shall be returnable immediately. Second. In all other cases, it shall be returnable in not less than four, or more than ten days from its date, and shall be served at least four days before the time for appearance.

SEC. 496. The summons shall be served by the sheriff or a constable of the county, or any white male person of lawful age, as follows: First. If the action be against a corporation, by the delivery of a copy to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof; or when no such officer resides in the county, to a director resident therein. Second. If against a minor under the age of fourteen years, by delivery of a copy to such minor, and also to his father, mother, or guardian; or if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is. Third. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by delivery of a copy to such guardian. Fourth. In all other cases, by delivery of a copy to the defendant personally.

SEC. 497. When the person upon whom the service is to be made resides out of the territory, or has departed from the territory, or cannot, after due diligence, be found within the territory, or conceals himself to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the justice, and it shall, in like manner, appear that a cause of action exists against the defendant in respect to whom the service is to be made, the justice shall grant an order that service be made by publication of the summons. The order shall direct the publication to be made in a newspaper, to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a

week: *Provided*, That a publication against a defendant residing out of the territory or absent therefrom, shall not be less than one month. The service of summons shall be deemed complete at the expiration of the time prescribed by the order of publication; the justice shall also direct a copy of the summons to be forthwith deposited in the post office, directed to the person to be served, at his, or his last known place of residence.

SEC. 498. An order to arrest the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable, at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases, arising after the passage of this act: First. In an action for the recovery of money or damages, and a cause of action arising on contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors; or when the action is for a wilful injury to the person, or for the taking, detaining, or injuring personal property. Second. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity. Third. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought. Fourth. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action.

SEC. 499. Before an order for arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay to him all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

SEC. 500. The defendant, immediately upon being arrested, shall be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of the defendant, that he is a material witness in the action, the officer shall immediately take the defendant before the next justice within the county,

who shall take cognizance of the action, and proceed thereon, as if the summons had been issued and the order of arrest made by him.

SEC. 501. The officer making an arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and endorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

SEC. 502. The officer making the arrest shall keep the defendant in custody until duly discharged by the order of the justice.

SEC. 503. The defendant under arrest, on his appearance with the officer, may demand a trial immediately; and upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the time; or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff, beyond three hours, shall discharge the defendant from arrest, but the action may proceed, notwithstanding; and the defendant shall be subject to arrest on the execution, in the same manner as if he had not been so discharged.

- SEC. 504. If the defendant on his appearance demand an adjournment, the same shall be granted, on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing the undertaking specified in this section, the justice shall order the defendant to be discharged from custody.

SEC. 505. In an action upon a contract, express or implied, made after the passage of this act, for the direct payment of money, which contract is made or is payable in this territory, and is not secured by mortgage, lien or pledge on real or personal property, the plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as hereinafter provided.

SEC. 506. A writ to attach the property of the defendant shall be issued by the justice, on receiving an affidavit by or

on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit in cases of attachment in the district court.

SEC. 507. Before issuing the writ, the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be dismissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment.

SEC. 508. The writ may be directed to the sheriff or any constable of the county, and shall require him to attach and safely keep all the property of the defendant in his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand—the amount of which shall be stated, in conformity with the complaint, unless the defendant give him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs; in which case, to take such undertaking.

SEC. 509. The sections of this act, from section one hundred and twenty-four to section one hundred and forty-one, both inclusive, shall be applicable to attachments issued in justices' courts—the word "constable" being substituted for the word "sheriff," whenever the writ is directed to a constable, and the word "justice" being substituted for the word "judge."

SEC. 510. The plaintiff, in an action to recover possession of personal property, may, at the time of issuing the summons or at any time before answer, claim the delivery of such property to him, as provided in this act.

SEC. 511. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second. That the property is wrongfully detained by the defendant. Third. The alleged cause of the detention thereof, according to his best knowledge, information and belief. Fourth. That the same has not been taken for a tax, assessment or fine, pursuant to statute, or seized, under an execution or an attachment against the property of the plaintiff; or, if seized, that it is by statute exempt from such seizure; and, Fifth. The actual value of the property.

SEC. 512. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or a constable

of the county to take the same from the defendant, and deliver it to the plaintiff, upon receiving the undertaking mentioned in the following section.

SEC. 513. Upon the receipt of the affidavit and order, with a written undertaking, executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent, from whose possession the property is taken; or if neither can be found within the county, by leaving them at the usual place of abode of either, within the county, with some person of suitable age and discretion; or if neither have any known place of abode within the county, by putting them in the nearest post office, directed to the defendant.

SEC. 514. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the officer that he excepts to the sufficiency of the sureties; if he fails to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify, on notice, before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

SEC. 515. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for payment to him of such sum as may, from any cause, be recovered against the defendant. If a return of the property be not so required within two days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this act.

SEC. 516. The defendant's sureties, upon reasonable notice

to the plaintiff, shall justify before the justice; and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff.

SEC. 517. If the property, or any part thereof, be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

SEC. 518. When the officer shall have taken property, as in this act provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

SEC. 519. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim, by an undertaking executed by two sufficient sureties accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are property holders of the county; and no claim to such property by any other person than the defendant, or his agent, shall be valid against the officer, unless so made.

SEC. 520. The officer shall return the order and affidavit, with his proceedings thereon, to the justice, within five days after taking the property mentioned therein.

SEC. 521. The qualification of sureties on the several undertakings required by this act, shall be as follows: First. Each of them shall be a resident and property holder within the county. Second. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

SEC. 522. For the purpose of justification, each of the sureties shall attend before the justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner as the

justice, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required.

SEC. 523. If the justice find the sureties sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and file the same, and the officer shall thereupon be exonerated from liability.

CHAPTER III.

PLEADINGS AND TRIAL.

SEC. 524. Pleadings defined.

525. When to be in writing and verified.

526. Oral, to be entered ; written, to be filed.

527. Complaint, what to state.

528. Answer, what to contain.

529. Certain statement in equal to denial.

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531. Instrument, genuineness of to be admitted.

532. Objection to pleadings.

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534. Amendment of pleadings.

235. Title of real property not to be raised, proceedings, when in question.

536. When action to be transferred, and how, adjournment of trial.

540. Plaintiff not appearing action dismissed.

541. Defendant not appearing case may proceed.

542. Trial by jury, when demanded, proceedings when jury trial demanded.

545. Challenging jurors.

SEC. 524. The pleadings in justices' courts shall be—First. The complaint by the plaintiff, stating the cause of action. Second. The answer by the defendant, stating the grounds of the defense.

SEC. 525. The pleadings shall be in writing and verified by the oath of the party, his agent or attorney, when the action is—First. For the foreclosure of any mortgage, or the enforcement of any lien, on personal property. Second. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions. Third. To recover possession of a mining claim. In other cases the pleadings may be oral or in writing.

SEC. 526. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office, and a reference to them made in the docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

SEC. 527. The complaint shall state, in a plain and direct manner, the facts constituting the cause of action.

SEC. 528. The answer may contain a denial of any of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense, or a counter claim, upon which an action might be brought by the defendant against the plaintiff, in a justice's court.

SEC. 529. A statement in an answer that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleadings of the adverse party, to form a belief, shall be deemed equivalent to a denial.

SEC. 530. When the cause of action, or counter claim, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereupon from the adverse party a specified sum, which he claims to recover or set off. The court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or, if it be not so exhibited and a copy furnished, may prohibit its being afterwards given in evidence.

SEC. 531. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money, upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the makers, indorsers or assignors thereof, unless he specifically deny the same in his answer, and verify the same by his oath.

SEC. 532. Either party may object to a pleading of his adversary, or to any part thereof, that is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded.

SEC. 533. A variance between the proof on the trial and the allegations in a pleading, shall be disregarded as imma-

terial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

SEC. 534. The pleadings may be amended at any time before the trial, to supply a deficiency or omission, when by such amendments substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars; but such payment shall not be required unless an adjournment is made necessary by the amendment; nor shall an amendment be allowed after a witness is sworn on the trial, when an adjournment thereby will be made necessary.

SEC. 535. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised on the trial before a justice, and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the decision of a question of title to real property, the justice shall suspend all further proceedings in the action, and certify the pleadings; or if the pleadings be oral, a transcript of the same from his docket to the district court of the county; and from the time of filing such pleadings or transcript with the clerk, the district court shall have over the action the same jurisdiction as if it were originally commenced therein: *Provided*, That when the pleadings or transcript are certified to the district court upon the answer of the defendant, he shall file an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that they will pay all costs of the action if it be decided against him by the district court.

SEC. 536. If at any time before the trial it appear, to the satisfaction of the justice before whom the action is brought, by affidavit of either party, that such justice is a material witness for either party, or if either party make affidavit that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before such justice, the action shall be transferred to some other justice of the same county; and in case of a jury being demanded, and affidavit of either party is made, that he cannot have a fair and impartial trial on account of the bias or prejudice of the citizens of the precinct or township against him, the action shall be transferred to

some other justice of the peace in the county. The justice to whom an action may be transferred by the provisions of this section, shall have and exercise the same jurisdiction over the action as if it had originally commenced before him. The justice ordering the transfer of the action to another justice, shall immediately transmit to the latter, on payment of costs, all the papers in the action, together with a certified transcript from his docket, of the proceedings therein. Upon the return day of the summons, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party, as follows: First. When a party, who is not a resident of the county, is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours. Second. In other cases, not to exceed five days.

SEC. 537. The trial may be adjourned by consent, or upon the application of either party, without the consent of the other, for a period not exceeding ten days (except as provided in the next section), as follows: First. The party asking the adjournment shall, if required by his adversary, prove, by his own oath, or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and shall show in what respects the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so. Second. The party asking the adjournment shall, also, if required by the adverse party, consent that the testimony of any witness of such adverse party who is in attendance, be then taken by deposition before the justice, which shall accordingly be done, and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections as if the witness were produced; but such objections shall be made at the time of taking the deposition. Third. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it is to be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

SEC. 538. An adjournment may be had, either at the time of joining issue, or at any time subsequent to which the case may stand adjourned, on application of either party, for a period longer than ten days, but not to exceed four months, from the time of the return of the summons, upon proof, by the oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the

time to which he desires an adjournment, for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced; that he has used due diligence to procure the evidence, and has been unable to do so, and that he expects to procure the evidence at the time stated by him: *Provided*, That if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered, or overruled as improper, the adjournment shall not be had.

SEC. 539. No adjournment shall be granted for a period longer than ten days, upon the application of either party, except on condition that such party file an undertaking, with sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying.

SEC. 540. If the plaintiff fail to appear at the return day of the summons, the action shall be dismissed.

SEC. 541. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at a day to which the trial has been adjourned, or fail to make the necessary pleading or proof on his part, the case may nevertheless proceed, at the request of the adverse party, and judgment shall be given in conformity with the pleadings and proofs.

SEC. 542. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it. When demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither party desire an adjournment, the time at a place shall be determined by the justice, and shall be on the same day, or within the next two days. The jury shall be summoned, upon an order of the justice, from the citizens of the city or township, and not from the bystanders.

SEC. 543. At the time appointed for the trial, the justice shall proceed to call, from the jurors summoned, the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than six nor less than three.

SEC. 544. If a sufficient number of competent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the bystanders, sufficient to complete the jury.

SEC. 545. Either party may challenge the jurors. The challenges shall be either peremptory or for a cause. Each party may challenge for cause, on any grounds set forth in

section number one hundred and sixty-two. Challenges for cause shall be tried by the justice in a summary manner, who may examine the juror challenged and witnesses.

CHAPTER IV.

JUDGMENT AND EXECUTION.

- SEC. 546.** Judgment of dismissal without prejudice, in what cases entered.
- 547.** Judgment by default.
- 548.** Proceeding when jury trial not demanded.
- 549.** Judgment, how and when entered.
- 550.** Proceedings when amount due exceeds jurisdiction of justice.
- 551.** Effect of defendant offering to allow judgment for specified sum.
- 552.** Judgment when defendant is subject to arrest.
- 553.** Costs to be included in judgment.
- 554.** How execution may be issued to sheriffs on judgment of justice, process on judgment, how issued, lien of judgment.
- 555.** Execution, form of.
- 557.** How executed, examination of debtor on oath.

SEC. 546. Judgment that the action be dismissed without prejudice to a new action may be entered, with costs, in the following cases: First. When the plaintiff voluntarily dismisses the action before it is finally submitted. Second. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter. Third. When it is objected at the trial and appears by the evidence that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal, on appeal, and shall not otherwise invalidate the judgment. If not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

SEC. 547. When the defendant fails to appear and answer, judgment shall be given for the plaintiff, as follows: When a copy of the account, note, bill, or other obligation upon which the action is brought was filed with the justice at the time the summons was issued, judgment shall be given, without further evidence, for the sum specified in the summons.

SEC. 548. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of fact and of law, and render judgment accordingly.

SEC. 549. Upon a verdict, the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases, it shall be entered within four days after the close of the trial. If the action be on contract against two or more defendants, and the summons is served on one or more, but not on all, the judgment shall be entered up only against those who were served, if the contract be a several or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all, and the separate property of the defendants served.

SEC. 550. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

SEC. 551. If the defendant, at any time before the trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he shall not recover costs, but costs shall be adjudged against him, and, if he recover, be deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to effect the recovery, otherwise than as to costs, as above provided.

SEC. 552. When a judgment is rendered in a certain case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

SEC. 553. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the verdict; or, in case of the failure of the plaintiff to recover, or in case of a dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

SEC. 554. The justice, on demand of the party in whose favor the judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the district clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the district clerk shall be noted by him thereon and entered in the docket; and from that time executions may be issued by the district clerk on such judgment to the sheriff of any other county of the territory, in the same manner as upon judgments re-

covered in the higher courts. All process upon judgments recovered in justices' courts to be executed within the same county, shall be issued by the justice or his successor in office. No judgment rendered by a justice of the peace shall create any lien upon any lands of the defendant, unless a transcript of such judgment, certified by the justice, be filed and recorded in the office of the recorder. When such transcript is to be filed in any other county than that in which the justice resides, such transcript shall be accompanied with the certificate of the county clerk, as to the official character of the justice. When so filed and recorded in the office of the recorder for any county, such judgment shall constitute a lien upon, and bind the lands and tenements of the judgment debtor situated in the county where such transcript may be filed and recorded, in favor of such judgment creditor, as if such judgment had been rendered in the district court of such county.

SEC. 555. Execution for the enforcement of judgment in a justice's court, may be issued on the application of the party entitled thereto, at any time within five years from the entry of the judgment.

SEC. 556. The execution, when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and shall bear date the day of its delivery to the officer to be executed. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when, it was rendered; the amount of the judgment, if it be for money; and if less than the whole is due, the amount due thereon. It shall contain, in like cases, similar directions to the sheriff or constable, as are required by the provisions of title seven of this act, in an execution to the sheriff.

SEC. 557. The sheriff or constable to whom the execution is directed, shall proceed to execute the same in the same manner as the sheriff is required by the provisions of title seven of this act, to proceed upon executions directed to him; and the constable, when the execution is directed to him, shall be vested for that purpose with all the power of the sheriff; and, after issuing an execution, and either before or after its return (if the same be returned unsatisfied, either in whole or in part), the judgment creditor shall be entitled to an order from the justice requiring the judgment debtor to attend at a time to be designated in the order, and answer concerning his property before such justice, and the attendance of such debtor

may be enforced by the justice ; on his attendance, such debtor may be examined under oath concerning his property, and any person alleged to have in his hands property, moneys, effects or credits of the judgment debtor, may also be required to attend and be examined ; and the justice may order any property in the hands of the judgment debtor, or any other person, not exempt from execution, belonging to such debtor, to be applied toward the satisfaction of the judgment ; and the justice may enforce such order by imprisonment until complied with ; but no judgment debtor, or other person, shall be required to attend before the justice out of the county in which he resides.

CHAPTER V.

GENERAL PROVISIONS.

- Sec. 558.** Applicable to justices' courts.
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585. Costs allowed to prevailing party.
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588. Justices' courts, certain provisions applicable to.

SEC. 558. Those provisions of this act which are referred to in this title, and no other, shall, in addition to the provisions embraced in this title, be applicable to justices' courts and proceedings therein.

SEC. 559. Every justice shall keep a book denominated a docket, in which he shall enter: First. The title of every action or proceeding. Second. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand. Third. The date of the summons and the time of its return, and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts. Fourth. The time when the parties, or either of them, appear, or their non-appearance if default be made; a minute of the pleadings and motions, if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleadings, and of all motions made during the trial by either party, and his decisions thereon. Fifth. Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time. Sixth. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury. Seventh. The names of the jury, who appear and are sworn, the names of all witnesses sworn, and at whose request. Eighth. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge. Ninth. The judgment of the court, specifying the costs included, and time when rendered. Tenth. The issuing of the execution, when issued, and to whom, the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when, and by whom. Eleventh. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

SEC. 560. The several particulars of the last section specified shall be entered, under the title of the action to which they relate, and at the time when they occur. Such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be primary evidence to prove the facts so stated therein.

SEC. 561. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family names.

SEC. 562. It shall be the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his prede-

cessors, which may be in his custody, to be kept as public records. If the office of a justice become vacant by his death or removal from the township or city, or otherwise, before his successor is elected and qualified, the dockets in possession of such justice shall be deposited with the county clerk of the county, to be by him delivered to the successor in office of the justice.

SEC. 563. Any justice with whom the docket of his predecessor is deposited may issue execution or other process upon a judgment there entered and unsatisfied, in the same manner and with the same effect as the justice by whom the judgment was entered might have done. In case of the creation of a new county or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such, within the same territory, may come, shall, for the purposes of this section, be considered the successor of said former justice.

SEC. 564. The justice elected to fill a vacancy shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same township, or city, from that time shall be deemed the successor.

SEC. 565. When two or more justices are equally entitled under the last section to be deemed the successor in office of a justice, the probate judge shall, by a certificate subscribed by him, and filed in the office of the county clerk, designate which justice shall be deemed the successor of a justice going out of office, or whose office has become vacant.

SEC. 566. The summons, execution, and every other paper made or issued by a justice, except a subpoena, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

SEC. 567. In case of sickness, or other disability or necessary absence of a justice on a return of summons, or at time appointed for a trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the power, for the time being, of the justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable.

SEC. 568. A justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person, of suitable age and not interested in the action, to serve a summons or execution, with or without an order to arrest the defendant, or, with or without a writ of attachment.

Said justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing on the process.

SEC. 569. The person so deputed shall have the authority of a constable in relation to the service, execution and return of such process, and shall be subject to the same obligations.

SEC. 570. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

SEC. 571. A justice may punish, as for a contempt, persons guilty of the following acts and no others: First. Disorderly, contemptuous or insolent behavior toward the justice, while holding the court, tending to interrupt the due course of a trial or other judicial proceeding. Second. A breach of the peace, boisterous conduct or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding. Third. Disobedience or resistance to the execution of a lawful order or process made or issued by him. Fourth. Disobedience to a subpoena duly served, or refusing to be sworn or answer as a witness. Fifth. Rescuing any person or property in the custody of any officer, by virtue of an order or process of the court held by him.

SEC. 572. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily, for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brouget before the justice immediately, when an opportunity to be heard in his defense, or excuse, shall be given. The justice may thereupon discharge him, or may convict him of the offence. A justice may punish for contempts by fine or imprisonment, or both; such fine not to exceed in any case one hundred dollars, and such imprisonment one day.

SEC. 573. The conviction, specifying particularly the offense and the judgment thereon, shall be entered by the justice in his docket.

SEC. 574. Justices of the peace may issue subpoenas in any action or proceeding in the courts held by them, and final pro-

cess on any judgment recovered therein, to any part of the county.

SEC. 575. Justices of the peace may issue commissions to take depositions of witnesses out of the territory, and settle interrogatories to be annexed thereto, and direct the manner in which the commissions shall be returned. The provisions of title eleventh of this act, so far as the same are consistent with the jurisdiction and powers of justices' courts, shall be applicable to justices' courts, and to actions and proceedings therein.

SEC. 576. In actions respecting mining claims, proof shall be admitted of the customs, usages, or regulations established and in force in the mining district embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this territory, shall govern the decision of the action.

SEC. 577. A new trial may be granted by the justice on motion, within ten days after the entry of judgment, for any one of the following causes: First. Accident or surprise, which ordinary prudence could not have guarded against. Second. Excessive damages, appearing to have been given under the influence of passion. Third. Insufficiency of the evidence to justify the verdict or other decision. Fourth. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the time.

SEC. 578. The application shall be made upon affidavit and notice. The affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

SEC. 579. Any party dissatisfied with a judgment rendered in a justice's court, may appeal therefrom to the district court of the county, at any time within twenty days after the rendition of judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy on the adverse party. The notice shall state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact, or both.

SEC. 580. When a party appeals to the district court on questions of law alone, he shall within ten days of the rendition of judgment, prepare a statement of the case and file the same with the justice. The statement shall contain the grounds on which the party intends to rely on the appeal, and

so much of the evidence as may be necessary to explain the grounds and no more. Within ten days after he receives notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments; the proposed statement and amendments shall be settled by the justice, and if no amendments be filed, the original statement shall be adopted. The statement thus adopted, or as settled by the justice, with a copy of the docket of the justice, and all motions filed with him by the parties during the trial, and the notice of appeal, shall be used on the hearing of the appeal before the district court.

SEC. 581. When a party appeals to the district court on questions of fact, or on questions of both law and fact, no statement need be made, but the action shall be tried anew in the district court.

SEC. 582. Upon receiving the notice of appeal, and on payment of the fees of the justice, and filing an undertaking as required in the next section, the justice shall, within five days, transmit to the clerk of the district court, if the appeal be on a question of law alone, a certified copy of his docket, the statement as admitted, or as settled, the notice of appeal, and the undertaking filed; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal, and the undertaking filed; and the justice may be compelled by the district court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same; a certified copy of such order may be served on the justice by the party or his attorney. In the district court either party shall have the benefit of all legal objections made in the justice's court.

SEC. 583. An appeal from a justice's court shall not be effectual for any purpose unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal; or if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money, or twice the value of the property, including costs, when the judgment is for the recovery of specific personal property; and shall be conditioned, when the action is for the recovery of money, that the applicant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in said action in the district court; where the action is for the recovery of specific personal property, the undertaking shall be condi-

tioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the district court, and will obey any order made by the court therein. The undertaking shall be accompanied by the affidavit of the sureties that they are residents of the county, and are each worth the amount specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution, or the bond shall be executed by a sufficient number of sureties, who can justify in the aggregate to an amount equal to double the amount specified in the bond; or a deposit of the amount of the judgment (including the costs) appealed from, or of the value of the property, including all costs, in actions for the recovery of specific personal property, with the justice; and such deposit shall be equivalent to the filing of the undertaking in this act mentioned; and in such cases the justice shall transmit the money to the clerk of the district court, to be by him paid out upon the order of the court. The adverse party may, however, except to the sufficiency of the sureties within five days after filing of the undertaking, and unless they, or other sureties, justify before the justice before whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amount stated in their affidavits, the appeal shall be regarded as if no undertaking had been given.

SEC. 584. If an execution be issued on the filing of the undertaking, staying all proceedings, the justice shall, by order, direct the officer to stay all proceedings on the same. Such officer shall upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property, or proceeds thereof, as may be necessary to pay the same.

SEC. 585. Costs shall be allowed to the prevailing party in a justice's court.

SEC. 586. Justices of the peace shall receive from the sheriff or constables of their county all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in their official capacity, and shall pay the same over to the parties entitled or authorized to receive them, without delay. For a violation of this section, they may be removed from their office, and shall be deemed guilty of a misdemeanor.

SEC. 587. Justices of the peace may, in all cases, require a deposit of money or an undertaking, as security for costs of court, before issuing a summons.

SEC. 588. The provisions of section thirty-two, three hundred and twenty-seven, three hundred and twenty-eight, three hundred and twenty-nine, three hundred and thirty, three hundred and thirty-one, three hundred and thirty-two, four hundred and seventy-four, four hundred and seventy-five, four hundred and seventy-eight, four hundred and eighty, four hundred and eighty-one, four hundred and eighty-two, and four hundred and eighty-six shall be applicable to justice's courts and actions therein.

TITLE XVIII.

MISCELLANEOUS PROVISIONS.

SEC. 589. Rules of court, how made.

590. Action against sheriff, etc.

591. Terms explained.

592. Sureties, how to justify.

593. Actions respecting mining claims in justices' courts.

594. Duty of receiver.

595. Writs of *certiorari*, etc., by whom issued.

596. Sale of property under writ of attachment.

597. Certified copies of papers to be evidence.

598. Co-partners, when summoned in firm's name.

599. Decisions on appeal to be in writing, etc.

600. Substitution of real party defendant.

601. Intervention, when allowed.

602. Who may intervene.

603. How and what set forth.

604. Court to determine.

605. Testimony to be in writing.

606. When taken during postponement of trial.

607. Execution for costs.

SEC. 589. The supreme court may make rules, not inconsistent with the constitution and laws of the territory, for its own government and the government of the district courts; but such rules shall not be in force until thirty days after their adoption and publication.

SEC. 590. If an action be brought against a sheriff for an act done by virtue of his office, and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties; and the court or judge in vacation may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

SEC. 591. Words used in this act in the present tense, shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

SEC. 592. In all cases where an undertaking with sureties is required by the provisions of this act, the judge, justice, clerk, or other officer taking the same, shall require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution: *Provided*, That when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

SEC. 593. In actions respecting mining claims, in a justice's court, the justice shall have power, upon application of the party out of possession of the claim or claims, after notice of one day to the adverse party, to appoint a receiver of the proceeds of the claim, pending the action. If the parties agree upon a person, he shall be appointed such receiver; if the parties do not agree, the justice shall appoint a receiver, who shall take an oath, which shall be filed with the justice, that he is not interested in the action between the parties, and that he will honestly keep an account of all gold dust or metals of any kind, the proceeds of the claims in dispute. After the appointment of such receiver, the justice shall have power to issue a written order to any sheriff or constable, to put such receiver into possession of such claim, which order said sheriff or constable shall execute, and the receiver shall remain in possession of the claim or claims so long as the said action may remain undetermined in any court. The court in which

the action may be pending, shall have the authority, upon the application of either party, with two days' notice to the other, from time to time, to make such orders for the disposition of the proceeds of such claim or claims, for the safety of the same, as may seem proper. The court in which the action may be pending, shall also have power, upon application of the receiver, based upon his affidavit, to punish, as for contempt, all persons who have been guilty of disturbing the receiver in the possession of the claims.

SEC. 594. The receiver mentioned in the last section shall keep an accurate account of all the proceeds of the claim pending the action, and of all amounts paid out for working the same, and shall retain the proceeds and pay the same over, pursuant to the order of the court. The receiver shall also be required, on demand of either party, to give security for the faithful performance of his trust; and shall be allowed for the same a reasonable compensation, to be paid out of the proceeds of the claim in his hands, but in no case exceeding ten per cent. upon such proceeds.

SEC. 595. Writs of *certiorari* and *mandamus* may be issued in the cases prescribed by this act, by a judge of the supreme court, district court, or probate court, in vacations; and may, in the discretion of the judge issuing the writ, be made returnable, and a hearing may be had on the return thereof in the vacation.

SEC. 596. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, or a probate judge, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court, to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

SEC. 597. A copy of any record or document or paper in the custody of a public officer of this territory, or of the United States within this territory, certified under the official seal, or verified by the oath of such officer, to be a true, full and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this territory, in the like manner, and with the like effect as the original could be, if produced.

SEC. 598. When two or more persons, associated in any business, transact such business under a common name,

whether it comprise the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates ; but the judgment in such cases shall bind only the joint property of the associates.

SEC. 599. All decisions given upon an appeal, in any appellate court in this territory, shall be given in writing, with the reasons therefor, and filed with the clerk of the court ; but this section shall not apply to actions tried with a jury anew in the district court on an appeal from a justice's court.

SEC. 600. A defendant, against whom an action is pending upon a contract or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract or for the same property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property or its value to such person as the court may direct ; and the court may, in its discretion, make the order.

SEC. 601. Any person shall be entitled to intervene in an action, who has an interest in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the complainant, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

SEC. 602. Any third person may intervene either before or after issue has been joined in the cause.

SEC. 603. The intervention shall be by petition or complaint filed in the court in which the action is pending, and it must set forth the grounds on which the intervention rests. A copy of the petition or complaint shall be served upon the parties to the action against whom anything is demanded, who shall answer as if it were an original complaint in the action.

SEC. 604. The court shall determine upon the intervention at the same time that the action is decided ; if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention.

SEC. 605. On the trial of any action in a court of record, at the request of either party, the court may, in its discretion,

appoint a competent person to take down the testimony in writing.

SEC. 606. The party obtaining the postponement of a trial in any court of record, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a judge or clerk of the court in which the cause is pending, or before such notary public as the court may indicate, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness were produced.

SEC. 607. Whenever costs are awarded to a party by an appellate court, such party may have an execution for the same, on filing a remittitur with the clerk of the court below, and it shall be the duty of such clerk, whenever the remittitur is filed, to issue the execution upon application therefor; and whenever costs are awarded to a party by an order of any court, such party may have an execution therefor in like manner as upon a judgment.

CONCERNING COURTS OF JUSTICE OF THIS TERRITORY AND JUDICIAL OFFICERS.

SEC. 608. The following shall be the courts of justice of this territory: First. The supreme court. Second. The district courts. Third. The probate courts. Fourth. The justices' courts.

SUPREME COURT.

SEC. 609. The supreme court shall have appellate jurisdiction in all civil cases where the amount in dispute exceeds in value one hundred dollars, and in all criminal cases tried in district courts; and shall hold its sessions at the capital, at the times fixed by law.

DISTRICT COURTS.

SEC. 610. The territory shall be divided into three judicial districts.

SEC. 611. There shall be a district judge for each of the judicial districts. The courts held by them shall be the district courts of the territory.

SEC. 612. The jurisdiction of these courts shall be of two kinds: First. Original. Second. Appellate.

SEC. 613. The district court shall have original jurisdiction in civil cases where the amount in dispute exceeds one hundred dollars, and in all criminal cases, not otherwise provided for.

Provided, The district court may enter judgment for a less sum than one hundred dollars upon the plaintiff's paying costs.

SEC. 614. The appellate jurisdiction of these courts shall extend to hearing upon appeal, an order or judgment of a probate court or justice of the peace, in the cases prescribed by statute.

SEC. 615. The courts and judges thereof shall have power to issue all writs necessary or proper to the complete exercise of the power conferred upon them by the constitution and the organic act.

SEC. 616. The terms shall be held at such times and places as provided by law; if a room for holding the court be not provided by the county, together with attendants, fuel, lights and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide such room, attendants, fuel, lights and stationery, and the expenses shall be a county charge.

SEC. 617. The district judges shall, at all reasonable times, when not engaged in holding courts, transact such business at their chambers as may be done out of court, at chambers; they may try and determine writs of *mandamus*, *certiorari*, and *quo warranto*, hear and dispose of all applications for orders and writs, which are usually granted, in the first instance, upon an *ex parte* application; and may, in their discretion, also hear applications to discharge such orders and writs.

SEC. 618. Whenever an action or proceeding is commenced in a district court, in which a probate court has concurrent jurisdiction, the district court may, if the parties consent, by order, transfer the same to the probate court of the same county; upon such transference, the probate court shall have and exercise over such action or proceeding the same jurisdiction as if originally commenced therein.

SEC. 619. Each district court shall have power to make rules, not inconsistent with the constitution and laws of this territory, for its own government and the government of its officers, but such rules shall not be in force until thirty days after their adoption and publication, and no rule shall be made imposing any tax or charge upon any legal proceeding, or making an allowance to any officer for services.

THE PROBATE COURTS.

SEC. 620. There shall be in each county a probate court, with the jurisdiction conferred by this chapter.

SEC. 621. The probate court shall have power to open and receive the proof of last wills and testaments, and to admit them

to probate; to grant letters testamentary, of administration, and of guardianship, and to revoke the same, for cause shown, according to law; to compel executors, administrators and guardians to render an account when required, or at the period fixed by law; to order the sale of property of estates, or belonging to minors; to order the payment of debts due by estates; to order and regulate all partitions of property or estates of deceased persons; to compel the attendance of witnesses; to appoint appraisers or arbitrators; to compel the production of title deeds, papers, or other property of an estate, or of a minor; and to make such other orders, as may be necessary and proper, in the exercise of the jurisdiction conferred upon the probate court.

SEC. 622. The probate judge shall have power in vacation to appoint appraisers; to receive inventories and accounts to be filed in his court; to suspend the powers of executors, administrators or guardians, in the cases allowed by law; to grant letters of administration or guardianship; to approve claims and bonds, and to direct the issuance from this court of all writs and process necessary, in the exercise of his powers as probate judge.

SEC. 623. The probate court shall have original civil jurisdiction: First. Of an action to enforce the lien of mechanics and others. Second. It shall also have concurrent jurisdiction with the district court of the territory, in all civil actions when the amount in controversy shall not exceed five hundred dollars. The probate court, and the judge thereof, shall have power at chambers to try and determine suits of *mandamus*, *certiorari*, and *quo warranto*, and to issue all writs necessary or proper to the complete exercise of the powers conferred upon it by this and other statutes, and in the absence of the district judge from the county, to issue writs of *habeas corpus* and injunction. If a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to procure such room, attendants, fuel, light, and stationery, and the expenses thereof shall be a county charge.

SEC. 624. A regular term of the probate court shall be held at the county seat of each county, commencing on the fourth Monday in January, April, July, and October, for the transaction of all business of which said court has jurisdiction: *Provided, however,* That if the district court of the district embracing any county be in session at such time, the probate court of the county in which said district court is held, shall stand adjourned until the first Monday of the ensuing month.

SEC. 625. That if said court shall not be held on the first day of the term, such court shall stand adjourned from day to day until the evening of the third day. If at that time the judge shall not have appeared and opened court, the same shall stand adjourned until the next regular term. Special adjourned terms may be held in continuation of the regular term, upon its being so ordered by the court in term time, and entered by the clerk upon the record of the court.

SEC. 626. In all actions, the jurisdiction of which has been given by this act to the probate courts, the party plaintiff shall, before his complaint and notice, writ, record or papers upon which his action is founded, be filed by the clerk, pay into the hands of said clerk a docket fee of ten dollars, which shall be paid to the probate judge by the clerk, and no docket fee shall be allowed attorneys in the probate court.

SEC. 627. That if the judge be disqualified for any cause from sitting on the determination of any cause or proceeding pending before him, the same shall be certified with the original papers to the district court of the district including the county, which shall proceed thereon to final judgment and determination.

SEC. 628. That each judge of the probate court shall be a conservator of the peace throughout his county.

SEC. 629. In all civil cases within their jurisdiction, the probate courts and the judges thereof shall have the same power to grant all orders, writs and process which the district courts or the judges thereof have power to grant within their jurisdiction, and to hear and determine all questions arising within their jurisdiction, as fully and completely as the district courts or the judges thereof have power to do under the laws of this territory.

SEC. 630. Juries in all civil actions in the probate courts shall consist of six persons having the qualifications of electors, who shall not be summoned until the cause is at issue and set for trial, and a demand is made in writing therefor by one or more of the parties, and their legal fees paid into the hands of the clerk by the party making the demand.

SEC. 631. The clerk shall issue a *venire* returnable on the day upon which the cause is set for trial, and if on the return day the panel be not full, it may be filled by summoning talesmen. No challenges shall be allowed either party except for cause.

JUSTICES' COURTS.

SEC. 632. The courts held by justices of the peace in this territory, shall be denominated justices' courts, and shall have

the jurisdiction conferred by this act, but nothing contained in this act shall affect their jurisdiction in actions or proceedings now pending therein, nor shall it affect any judgment or order already made, or proceedings already taken.

SEC. 633. Justices' courts shall have jurisdiction of the following actions and proceedings: First. Of an action arising on contracts for the recovery of money only, if the sum claimed does not exceed one hundred dollars. Second. Of an action for damages for injury to the person, or for taking or detaining personal property, or for injuring real or personal property, if the damages claimed do not exceed one hundred dollars. Third. Of an action for a fine, penalty or forfeiture, not exceeding one hundred dollars, given by statute, or the ordinance of an incorporated city. Fourth. Of an action upon a bond conditioned for the payment of money not exceeding one hundred dollars though the penalty exceed that sum, the judgment to be given for the sum actually due; when the payments are to be made by installments, an action may be brought for each installment as it becomes due. Fifth. Of an action upon a surety bond or undertaking taken by them, though the penalty exceed, if the amount claimed does not exceed one hundred dollars. Sixth. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on real or personal property, when the debt secured does not exceed one hundred dollars. Seventh. Of an action to recover the possession of personal property, when the value of such property does not exceed one hundred dollars. Eighth. To take and enter judgment on the confession of a defendant when the amount confessed does not exceed one hundred dollars. Ninth. Of an action for a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions. Tenth. Of an action to determine the right to a mining claim, and for damages for injury to the same, when the damages claimed do not exceed one hundred dollars. Eleventh. Of proceedings respecting vagrants and disorderly persons.

SEC. 634. The jurisdiction conferred by the last section shall not extend, however, to a civil action in which the title to real property shall come in question.

SEC. 635. These courts shall also have jurisdiction of the following public offenses, committed within the respective counties in which such courts are established: First. Petit larceny. Second. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties, or with intent to kill. Third. Breaches of the peace, riots, affrays, committing a willful injury to property, and all mis-

demeanors, punishable by fine, not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment.

SEC. 636. There shall be no terms in justices' courts; these courts shall be always open.

SEC. 637. Each justice, before entering upon the discharge of his duties, shall take the constitutional oath of office, and shall execute a bond to the territory, in the sum of two thousand dollars, conditioned for the faithful performance of his duties, and file the same with the county clerk.

GENERAL PROVISIONS RESPECTING THE COURTS OF JUSTICE AND JUDICIAL OFFICERS.

SEC. 638. The supreme court, the several district courts, and the several probate courts of this territory shall be courts of record.

SEC. 639. The sittings of every court of justice shall be public, except as is provided in the next section.

SEC. 640. In an action for divorce, the court may direct the trial of any issue of fact joined therein to be private, and upon such directions, all persons may be excluded, except the officers of the court, the parties, their witnesses and counsel.

SEC. 641. Every court shall have power—First. To preserve and enforce order in its immediate presence. Second. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority. Third. To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court, in an action or proceeding pending therein. Fourth. To control, in furtherance of justice, the conduct of its ministerial officers.

PARTICULAR DISQUALIFICATION OF JUDGES.

SEC. 642. A judge shall not act as such in any of the following cases: First. In an action or proceeding to which he is a party or in which he is interested. Second. When he is related to either party, by consanguinity or affinity, within the third degree. Third. When he has been attorney or counsel for either party in the action or proceeding. But this section shall not apply to the arrangement of the calendar or the regulation of the order of business.

SEC. 643. A judge shall not act as attorney or counsel in a court in which he is judge, or in an action or proceeding removed therefrom to another court for review, or in any action

or proceeding from which an appeal may lie in his own court.

SEC. 644. A judge of the supreme court or of the district court shall not act as attorney or counsel in any court, except in an action or proceeding to which he is a party on the record.

SEC. 645. A judge or justice of the peace shall not have a partner acting as attorney or counsel in any court in this territory.

JUDICIAL DAYS AND PLACES OF HOLDING COURTS.

SEC. 646. The courts of justice may be held and judicial business may be transacted on any day except as provided in the next section.

SEC. 647. No court shall be opened, nor shall any judicial business be transacted on Sunday, on New Year's day, on the Fourth of July, on Christmas day, on Washington's birthday, on Thanksgiving day, or on a day in which the general election is held, except for the following purposes: First. To give, upon their request, instructions to a jury then deliberating on their verdict. Second. To receive a verdict or discharge a jury. Third. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; *Provided*, That when the day fixed for opening a court shall fall on any of the days mentioned in this section, the court shall be opened on the next or succeeding day.

SEC. 648. Every court of justice, except a justice's, shall sit at the county seat of the county in which it is held, except in cases provided by law, approved December eighteenth, eighteen hundred and sixty-three. No justice of the peace shall hold a court in any other county or city than the one for which he shall have been elected.

SEALS OF THE COURTS OF JUSTICE.

SEC. 649. Each of the following courts, and no others, shall have a seal: First. The supreme court. Second. The district courts. Third. The probate courts.

SEC. 650. The clerk of each court shall keep the seal thereof.

SEC. 651. The seal of the court need not be affixed to any proceedings therein, except—First. To a summons or writ. Second. To the proof of a will, or the appointment of an executor, administrator or guardian. Third. To the authentication of a copy of a record, or other proceeding of the

court, or an officer thereof, for the purpose of evidence in another court.

SEC. 652. The seal may be affixed by impressing it on the paper, or on a substance attached to the paper, and capable of receiving the impression.

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

SEC. 653. If an application for an order, made to a judge of a court in which the action or proceeding is pending, be refused in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court; *Provided*, That nothing in this section be so construed as to apply to motions refused for any informality in the papers or proceedings necessary to obtain an order.

SEC. 654. A violation of the last section may be punished as a contempt; and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of a court in which the action or proceeding is pending.

SEC. 655. The judges of the supreme court, of the district courts and of the probate courts shall have power in any part of the territory, and justices of the peace within their respective counties, shall have power to take and certify—
First. The proof and acknowledgement of a conveyance of real property, or of any other written instrument. Second. The acknowledgment of satisfaction of a judgment of any court. Third. An affidavit to be used in any court of justice of this territory.

SEC. 656. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the judges, or by the failure of a term thereof.

SEC. 657. Every written proceeding in a court of justice in this territory, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

SEC. 658. Entry into lands, how made.

659. Justice of the peace may inquire into, and have restitution.

660. Proceedings on complaint to justice.

663. Proceedings when defendant absent from county.

664. Adjournment of trial, when to be made.

665. Testimony, how taken.

- Sec. 666.** What complainant required to show, what defendant may show in defense.
667. Proceedings on decision of case.
668. When jury cannot agree.
669. Damages, rents, etc., on verdict for complaint.
670. Proceedings against tenants holding over.
671. Preceding article not applicable to certain cases.
672. Penalty for not attending as a juror or witness.
673. Appeals, when and how to be taken.
674. Appeal to stay proceedings and trial, statement of case not necessary.
675. Appeal to stay proceedings on writ of restitution.
676. Matter of form immaterial.
677. Amendments to pleadings.
678. Summons, form of.
679. Form of writ of restitution.

Sec. 658. No person or persons shall hereafter make any entry into lands, tenements or other possessions, but in cases where entry is given by law ; and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

Sec. 659. Any justice of the peace shall have authority to inquire, as hereinafter directed, as well against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same, as against those who, having lawful and peaceful entry into lands, tenements, or other possessions, unlawfully detain the same ; and if it be found, upon such inquiry, that an unlawful or forcible entry hath been made, and that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Sec. 660. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before the said justice on a day in such summons named, which shall not be more than ten days from the issuing of such summons, and at the place therein mentioned.

Sec. 661. Such summons shall be served upon the person or persons against whom the same is issued, by delivering a certified copy thereof to such person or persons at least four days before the return day thereof; and the officer serving the same shall make a special return of the time and manner of serving such summons.

Sec. 662. After the return of the summons, served as

hereinbefore provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party shall demand a jury; in which case, the justice shall issue a *venire* for a jury, in the same manner, and upon the same terms, as in other cases provided for trial by jury in justices' courts, and such jury shall be sworn as in other cases.

SEC. 663. If, at the time of making such complaint, it shall be made to appear that such person or persons against whom said complaint is made, or either of them, are absent from the county, it shall be the duty of the justice before whom the same is made, to issue his summons, as hereinbefore provided, and the same may be served by leaving a certified copy thereof at the last and usual place of abode of such person or persons, not less than four days before the return day thereof, which copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer leaving the same, and the officer shall make a special return of the time and manner of serving said summons, and the suit shall thereafter proceed the same as though a personal service were had of such summons.

SEC. 664. The justice may, in his discretion, adjourn any trial under this act, not exceeding ten days; and when the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial, for want of some material witness, naming him, that he has made due exertion to obtain such witness, and believes, if an adjournment be allowed, he will be able to procure the attendance of such witness, or his deposition, in time to produce the same upon the trial, in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding three months.

SEC. 665. The testimony of any witness, which may be considered necessary by either party, may be taken in the same manner, and with the like effect, as is provided for the taking of testimony in other cases in justices' courts.

SEC. 666. On the trial, the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of a forcible entry, or was entitled to the possession of the premises at the time of a forcible holding over. The

defendant may show in his defense that he, or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inquisition, and that his interest therein is not then ended or determined, and such showing shall be a bar to the prosecution; and in no case when the title of land is necessarily involved, shall a justice of the peace have cognizance.

SEC. 667. If upon the trial of any complaint under this act, the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations in the complaint, said justice shall thereupon enter judgment for the complainant to have restoration of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said justice shall award and issue a writ of restitution; but if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant, and issue execution therefor.

SEC. 668. If the jury empaneled cannot agree upon a verdict, the justice may, with the consent of the parties, discharge them, and issue a *venire* returnable forthwith, or at some other time agreed upon by the parties.

SEC. 669. In all cases of a verdict by the justice or jury for the complainant, the damages shall be assessed as well for waste and injury committed upon the premises, as for the rents and profits during such detainer, and the verdict shall also find the monthly value of the rents and profits of the said premises; and the complainant shall be entitled to recover treble damages against the persons against whom judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice, and entered as a judgment in the cause, upon which execution may issue.

SEC. 670. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised, or let him or her, or to the person under whom he or she holds possession, or contrary to the conditions or covenants of the lease or agreement under which he or she holds, or after any rent shall become due according to the terms of such lease or agreement, and shall remain unpaid for the space of three days; in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant, that he or she shall deliver possession of the premises held as afore-

said, and if such tenant shall refuse or neglect, for the space of three days after such demand, to quit the possession of such lands or tenements, or to pay the rent thereof, due and unpaid as aforesaid, upon complaint thereof to any justice of the peace of the proper county, the justice shall proceed to hear, try, and determine the same, in the same manner as in other cases herein before provided for, but shall impose no fine upon any such case mentioned in this section.

SEC. 671. The preceding section shall not extend to any person who has, or shall have continued in possession one year after the termination of the time for which the premises were demised, or leased, or let to him or her, or those under whom he or she holds possession, or to any person who continues in possession three years, quietly and peaceably.

SEC. 672. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or who, appearing, shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for every such default, or refusal, to the use of the county, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

SEC. 673. If either party shall feel aggrieved by the verdict of the jury, or decision of the justice, he may appeal within ten days, as in other cases tried before justices of the peace, to the district court, and he shall give bond, with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal, and abide the order the court may make therein, and pay all rent and other damages justly accruing during the pending of such appeal; and upon the filing of the notice of appeal, and the affidavit of the appellant that the appeal is taken in good faith, and that he intends to perfect said appeal, the justice shall grant a stay of the writ of restitution for not exceeding two days, for the purpose of allowing the appellant an opportunity to file his appeal bond, and for no other.

SEC. 674. Upon taking such appeal, all further proceedings in the case shall be thereby stayed, and the appellate court, in all cases which are now pending, or which may hereafter be brought, shall proceed to try the case anew, and shall issue all necessary writs and process to carry out the provisions of this act. All laws, or parts of laws, which require a statement of the case, or evidence, or exceptions, to be taken before a justice of the peace, on the trial of a case for forcible entry and unlawful detainer, in order to perfect an appeal, are hereby

repealed, and the same shall be tried in the appellate court on the evidence introduced before said appellate court.

SEC. 675. If a writ of restitution shall have been issued previous to the taking of the appeal, the justice shall give the appellant a certificate of the allowance of such appeal; and upon the serving of such certificate upon the officer having such writ of restitution, said officer shall cease all further proceedings by virtue of such writ, and if such writ shall not have been completely executed, the parties in possession shall remain in possession of the premises until the appeal shall be determined.

SEC. 676. In all cases of appeal under this act, the appellate court shall not dismiss or quash the proceedings for want of form, only provided the proceedings have been conducted substantially according to the provisions of this act.

SEC. 677. Amendments to the complaint, answer, or summons, in matters of form only, may be allowed by the court at any time before final judgment, upon such terms as may be just, and all matters of excuse, justification, or avoidance of the allegations in the complaint, may be given in evidence under the answer.

SEC. 678. The following, or equivalent forms, may be used in proceedings under this act, to wit:

SUMMONS.

The people of the United States, of the Territory of Idaho, to the sheriff or any constable of the county aforesaid:

WHEREAS, A. B., of the county of _____, hath exhibited unto me, a justice of the peace for said county, a complaint against C. D., of the county of _____, for that the said C. D., of the county of _____, on the ____ day of ____, A. D. ____, at the county of _____, [here insert the substance of the complaint, with sufficient certainty.] You are therefore commanded to summon the said C. D., if he be found in your county, to be and appear before me, at my office (or stating the place), on the ____ day of ____, A. D. ____, then and there to make answer unto the complaint aforesaid. Given under my hand and seal, this ____ day of ____, A. D. ____.

E. F., justice of the peace.

WRIT OF RESTITUTION.

SEC. 679. The people of the United States, of the Territory of Idaho, to the sheriff or any constable of the county aforesaid:

WHEREAS, A. B., of the county of ———, at a court of inquiry of an unlawful or forcible entry, or unlawful detainer (as the case may be), held at my office (or state the place), in the county aforesaid, on the ——— day of ———, A. D., ———, before me, a justice of the peace for the county aforesaid, by the consideration of the court, hath recovered judgment against C. D., to have restitution of [here describe the premises, as in the complaint.] You are therefore commanded that, taking with you the force of the county, if necessary, you cause the said C. D. to be immediately removed from the aforesaid premises, and the said A. B. to have peaceable restitution of the same; and you are also commanded that, of the goods and chattels of the said C. D., within said county, you cause to be made the sum of ——— dollars for the said plaintiff, together with costs of suit indorsed thereon, and make return hereof within thirty days from this date. Given under my hand this ——— day of ———, A. D. ———. E. F., justice of the peace.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

- Sec. 680. Actions by tenants in common.
681. Complaint, what to set forth.
682. Who need not be made parties.
683. Notice to be filed in recorders office.
684. To whom summons directed.
685. Publication of.
686. Answers, what to set forth.
687. Right of parties may be determined.
688. Certificates as to liens on property.
689. Persons holding liens to be made parties.
690. Notice to be given.
691. Sale of property, when may be ordered.
692. Partition, how to be made.
693. Report of referees.
694. Judgment on, effect of.
696. Expenses of referees.
597. Lien on undivided interest.
698. Estate for life or years, how set off.
699. Proceeds of sale of incumbered property how applied.
700. When there are other securities.
701. Proceeds, how to be distributed.
702. Determination of conflicting claims.
703. Sales, how made.
706. How tenant for life, etc., may receive satisfaction for estate sold.

- SEC. 709. Contingent future right or estate, how settled.
710. Terms and mode of sale.
711. Certain parties not to be interested in purchase, report of sale.
713. Order to execute conveyance.
714. Where party entitled to share purchases.
715. Conveyance, where recorded and effect.
716. Disposition of proceeds of sale, unknown owner is interested.
718. Duty of referees in relation to partition, etc.
720. Compensation when partition is unequal.
721. Proceeds of sale, infant's share paid to guardian.
722. Proceeds of sale, share of insane person.
723. Partition may be consented to by guardian.
724. Cost of partition.
725. Single referee may be appointed.
726. Mining claims. partition of, how made.
727. Mining claims, sale injurious, court to appoint commissioners.
728. How sold, purchasers, who deemed.
730. Claims bid for to be segregated.
732. Court may dispose of report of commission.
733. Commissioners expenses, etc.

SEC. 680. When several persons hold and are in possession of real property, as joint tenants or as tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein; and for a sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

SEC. 681. The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

SEC. 682. No persons who have or claim any liens upon the property, by mortgage, judgment or otherwise, need be made parties to the action, unless such liens be matters of record.

SEC. 683. Immediately after filing the complaint, the plaintiff shall file with the recorder of the county in which the property is situated, a notice of the pendency of the action containing the names of the parties, so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing, it shall be deemed notice to all persons.

SEC. 684. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any interest in or any liens of record, by mortgage, judgment or otherwise, upon the property, or upon any particular portion thereof; and generally to all persons unknown, who have or claim any interest in the property.

SEC. 685. If a party having a share or interest is unknown, or any one of the known parties reside out of the territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When the publication is made, the summons, as published, shall be accompanied by a brief description of the property which is the subject of the action.

SEC. 686. The defendants who have been personally served with the summons and a certified copy of the complaint, shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property; and if such defendants claim a lien upon the property, by mortgage, judgment or otherwise, they shall state the amount and date of the same; and the amount remaining due thereon, and whether the amount has been secured in any other way or not; and if secured, the extent and nature of the security, or they shall be deemed to have waived their right to such lien.

SEC. 687. The rights of several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action; and when a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made; and where service of the complaint has been made by publication, like proof shall be required of the right of the absent or unknown parties, before such judgment is rendered; except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

SEC. 688. The plaintiff shall produce to the court, on the hearing of the case, the certificate of the recorder of the county where the property is situated, showing whether there were or not any liens outstanding of record upon the property, or any part thereof, at time of the commencement of the action.

SEC. 689. If it appears by the certificate of the recorder that there were outstanding liens of record at the time of the commencement of the action, and the persons holding or claiming such liens were not made parties to the action, the court shall either order such parties to be brought in by an

amendment, or supplemental complaint, or appoint a referee to ascertain whether their liens have been paid; or if not paid, what amount remains due, and their order among the liens held by the parties who have appeared and answered; and whether the amount remaining due thereon has been secured in any way, and if secured, the extent and nature of the security.

SEC. 690. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication, or notice to his agent, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

SEC. 691. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the requisite proofs being made, it shall order a partition, according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and shall designate the portion to remain undivided, for the owners whose interests remain unknown or are not ascertained.

SEC. 692. In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties, as determined by the court, designating the several portions by proper landmarks; and may employ a surveyor, with the necessary assistants, to aid them therein.

SEC. 693. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

SEC. 694. The court may confirm or set aside the report, and if necessary appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be

effectual forever; which judgment shall be binding and conclusive: First. On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life, or for years; or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the termination of a particular estate therein; and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life. Second. On all persons interested in the property who may be unknown, to whom notice shall have been given of the action for partition by publication; and, Third. On all other persons claiming from such parties or persons, or either of them.

SEC. 695. But such judgment and partition shall not affect tenants for years less than ten, to the whole of the property which is the subject of the partition.

SEC. 696. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court; and the amount thereof, together with the fees allowed by law to the referees, shall be apportioned among the different parties to the action.

SEC. 697. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of partition, in preference to such lien.

SEC. 698. When a part of the property only is ordered to be sold, if there be an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

SEC. 699. The proceeds of the sale of the encumbered property shall be applied under the direction of the court, as follows: First. To pay its just proportion of the general costs of the action. Second. To pay the costs of the reference. Third. To satisfy and cancel of record the several liens in their order of priority, by payment of the sum due and to become due; the amount to be verified by affidavit at the time of payment. Fourth. The residue among the owners of the property sold, according to their respective shares therein.

SEC. 700. When any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction

to be made from the amount of the lien on the property, on account thereof.

SEC. 701. The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

SEC. 702. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings, as in an original action.

SEC. 703. All sales of real property, made by referees under this chapter, shall be made by public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it, is to be sold, subject to a prior estate, charge, or lien, that shall be stated in the notice.

SEC. 704. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required, by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the territory.

SEC. 705. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant; and for other shares, in the name of the clerk of the county and his successors in office.

SEC. 706. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept, instead thereof, by an instrument in writing, filed with the

clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

SEC. 707. If such consent be not given, filed and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in court for him, as the case may require.

SEC. 708. If the person entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights, in the same manner, as far as may be, as if they were known and had appeared.

SEC. 709. In all cases of sale, when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

SEC. 710. In all cases of sale of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

SEC. 711. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

SEC. 712. After completing a sale of the property, or any part thereof ordered to be sold, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid as secured, the terms and conditions of the sale, and the securities (if any) taken. The report shall be filed in the office of the clerk of the county where the property is situated.

SEC. 713. If the sale be confirmed by the court, an order shall be entered, directing the referees to execute conveyances and take securities, pursuant to such sale—which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

SEC. 714. When a party entitled to a share of the property, or an incumbrancer, entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

SEC. 715. The conveyances shall be recorded in the county

where the premises are situated, and shall be a bar against all persons interested in the property, in any way, who shall have been named as parties in the action ; and against all such parties and persons as were unknown, if the summons have been served by publication, and against all persons claiming from them, or either of them.

SEC. 716. When there are proceeds of sale belonging to an unknown owner, or to persons without the territory, who has no legal representative within it, the same shall be invested in securities, on interest, for the benefit of the persons entitled thereto.

SEC. 717. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done (except as herein otherwise provided) in the name of the clerk of the county where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested—subject to the order of the court.

SEC. 718. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing, under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the name of, and payable to, the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

SEC. 719. The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same, as the court may direct ; and shall file in his office all securities taken, and keep an account, in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

SEC. 720. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered by judgment, the court may adjudge compensation to be made by one party to another, on account of the inequality of partition ; but such compensation shall not be required to be made to others, by owners unknown, nor by infants—unless, in case of an infant, it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

SEC. 721. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed by him in the action, upon giving the security required by law, or directed by order of the court.

SEC. 722. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property, from the referees, on executing, with sufficient sureties, an undertaking approved by a judge of the court, or by a county judge, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or his legal representative.

SEC. 723. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree to the share to be set off to such infant, or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court, which partition shall be approved or disapproved by the court.

SEC. 724. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case, they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

SEC. 725. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter; and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

SEC. 726. When several persons hold and are in possession of mining claims, as joint tenants, or tenants in common, upon the petition of one or more of the joint tenants or ten

ants in common, the court having jurisdiction shall appoint a commissioner, who shall proceed to make a partition of the property to be divided, and make a report to the court, as provided in this act.

SEC. 727. In case of partition of a mining claim, any of the tenants in common, or joint tenants, interested therein, may file an affidavit showing to the court that a sale for cash would be injurious to him, her or them; the court shall, upon such showing, appoint a commissioner, who shall decide such claim as hereinafter provided for.

SEC. 728. The commissioner provided for in the last section shall proceed to the place where such claim is located, and at such time as the court may direct, within not less than twenty, nor more than forty days after such sale shall have been ordered by the court, shall sell such claim at auction to the highest bidder, in parts or parcels, to the joint tenants, or tenants in common, and shall receive bids in shares or undivided interests; or parts of such claim to be divided.

SEC. 729. The party or parties seeking the partition of such mining claim, shall be deemed the highest bidder, within the meaning of the last preceding section, who will take the least part or partition of such mining claim, at a place upon such claim to be selected by him, her or them, in proportion to the whole share, shares, or interest, held by such party or parties; *Provided*, That if the remainder of the joint tenants, or tenants in common, shall fail to make a higher bid, in proportion to their joint shares or interests in such claim, then the bid of the party or parties seeking the partition, shall be received and declared to be the highest bid; and the commissioner shall proceed to measure off such claim to the party or parties, as hereinafter provided, and such claim, or part of the claim, so measured off by the said commissioner to the highest bidder, shall be, and is hereby, considered as an entire surrender to the opposing party of the remainder of his or her shares or interests in such claim, thereby relinquishing the residue of the shares or interests held by the party to whom was awarded the highest bid (not included in the measurement of said commissioner) to the adverse party.

SEC. 730. Whenever any such bid as mentioned in sections seven hundred and twenty-eight and seven hundred and twenty-nine shall have been received and declared, the commissioner shall go upon the claim and measure off to such bidder the amount of such claim so bid off, at such place as the bidder shall elect.

SEC. 731. After setting off such bids, as provided in the

last section, the commissioner shall again receive bids, as hereinbefore provided, and shall thereafter measure off such bids, as provided for in section seven hundred and twenty-nine, and shall continue in the same manner to receive bids and set apart the same from such claims, until the parties who still hold an undivided portion of such mining claim shall be satisfied that the sale cease, and are content to hold the remaining portion of such claims as joint tenants, or tenants in common, as the case may be.

SEC. 732. The court may confirm or set aside the report, and, if necessary, appoint a new commissioner. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever—which judgment shall be binding and conclusive.

SEC. 733. The expenses and reasonable compensation of the commissioner, including those of the surveyor, when employed, shall be ascertained and allowed by the court, and shall be apportioned among the parties to the action.

SEC. 734. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, February 1st, 1864.

CHAPTER II.

AN ACT to regulate Proceedings in Criminal Cases, in the Courts of Justice in the Territory of Idaho.

I.—GENERAL DEFINITIONS AND PROVISIONS.

- SEC. 1. Crimes defined.
2. Public offences, how divided, felony, misdemeanor.
5. No punishment except on conviction.
6. Prosecutions by indictment, exceptions.
7. Criminal actions, how prosecuted.
10. Rights of defendants, second prosecution for same offence.
11. Self crimination.
12. Mode of conviction.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. A crime or public offence is an act or omission forbidden by law, and to which is annexed, on conviction—First. Death. Second. Imprisonment. Third. Fine. Fourth. Removal from office. Fifth. Disqualification to hold or enjoy any office of honor, trust or profit under this territory.

SEC. 2. Public offences are divided into—First. Felonies. Second. Misdemeanors.

SEC. 3. A felony is a public offence punishable with death, or by imprisonment in the territorial prison.

SEC. 4. Every public offence is a misdemeanor.

SEC. 5. No person can be punished for a public offence except upon legal conviction in a court having jurisdiction.

— SEC. 6. Every public offence must be prosecuted by indictment, except—First. When proceedings are had for the removal of a civil officer of the territory. Second. Offences arising in the militia when in actual service in time of war, or which this territory may keep, with the consent of congress, in time of peace. Third. Offences tried in justices' courts.

SEC. 7. The proceedings by which a party charged with a public offence is accused and brought to trial and punishment, shall be known as a criminal action.

SEC. 8. A criminal action shall be prosecuted in the name of the people of the United States in the territory of Idaho, as a party against the party charged with the offence.

SEC. 9. The party prosecuted in a criminal action is designated in this act as the defendant.

SEC. 10. In a criminal action the defendant is entitled—First. To a speedy and public trial. Second. To be allowed counsel, as in civil actions, or he may appear and defend in person, or with counsel; and Third. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down in writing, and subscribed by the witness in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness, or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined, or had an opportunity to cross-examine the witness, the deposition of such witness may be read upon its being satisfactorily shown to the court that he is dead or insane, or cannot, with due diligence, be found within the territory.

SEC. 11. No person shall be subject to a second prosecution for a public offence, for which he has once been prosecuted and duly convicted or acquitted.

SEC. 12. No person shall be compelled, in a criminal action, to be a witness against himself; nor shall a person charged with a public offence be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

SEC. 13. No person can be convicted of a public offence, tried by indictment, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon

judgment against him upon a demurrer to the indictment in the case, mentioned in section two hundred and ninety-two.

II.—PREVENTION OF PUBLIC OFFENCES.

- SEC. 14. Resistance to commission of crime, etc.
16. Other persons may aid.
 17. Prevention of offences by public officers and other persons.
 19. Complaint for threatening offence, examination of, etc.
 21. Magistrate to issue warrant, how to be directed.
 22. Hearing evidence in writing, complaint to be dismissed.
 24. Surety to keep the peace when required, amount of bond.
 25. Commitment on failure of bond, etc.
 26. Same, on discharge of, bond to be filed.
 28. Breach of peace in presence of magistrate, bond to keep the peace, when forfeited.
 30. Bond, when to be prosecuted, evidence of breach of bond.
 32. No other security required.
 34. Police in cities and towns.
 35. When sheriff may command assistance.
 36. Registers of process to be reported, refusal to assist officer, misdemeanor.
 38. Governor to aid sheriff.
 39. Riotous assembly to be dispersed, refusal may be arrested.
 40. Refusal to aid officer, misdemeanor.
 41. Officer neglecting to aid in quelling riot, misdemeanor.
 42. Officer may command aid.
 43. Armed force, by whose orders to act.
 44. Orders for troops to suppress unlawful assembly, by whom made.
 45. Order to be obeyed.
 46. Governor may proclaim county in state of insurrection.
 47. Revocation of such proclamation.
 48. Resisting authorities after such proclamation, punishment.

SEC. 14. Lawful resistance to the commission of a public offence may be made—First. By the party about to be injured. Second. By other parties.

SEC. 15. Resistance sufficient to prevent the offence may be made by the party about to be injured—First. To prevent an offence against his person, or his family, or some member thereof. Second. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

SEC. 16. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offence.

SEC. 17. Public offences may be prevented by the intervention of the officers of justice: First. By requiring surety to keep the peace. Second. By forming a police in cities

and towns, and requiring their attendance in exposed places.
Third. By suppressing riots.

SEC. 18. Whenever the officers of justice are authorized to act in the prevention of public offences, other persons who, by their command, act in their aid, are justified in so doing.

SEC. 19. A complaint may be made before any of the magistrates mentioned in section one hundred and two, that a person has threatened to commit an offence against the person or property of another.

SEC. 20. When the complaint is laid before the magistrate he shall examine, on oath, the complainant and any witness he may produce, and shall take their depositions in writing, and cause them be subscribed by the parties making them.

SEC. 21. If it appear from the depositions that there is just reason to fear the commission of the offence threatened by the person so complained of, the magistrate shall issue a warrant directed generally to the sheriff of the county, or any constable, marshal, or policeman in the territory, reciting the substance of the complaint, and commanding the officer forthwith to arrest the person complained of, and bring him before the magistrate.

SEC. 22. When the person complained of is brought before the magistrate, if the charge be controverted, the magistrate shall take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

SEC. 23. If it appear that there is no just reason to fear the commission of the offence alleged to have been threatened, the person complained of shall be discharged.

SEC. 24. If, however, there be just reason to fear the commission of the offence, the person complained of may be required to enter into a bond, in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties to keep the peace toward the people of this territory, and particularly toward the complainant. The bond shall be valid and binding for six months, and may upon renewal of the complaint, be extended for a longer period, or a new bond may be required.

SEC. 25. If the bond required by the last section be given, the party complained of shall be discharged. If he do not give it, the magistrate shall commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

SEC. 26. If the person complained of be committed for not giving the bond required, he may be discharged by any magistrate, upon giving the same.

SEC. 27. A bond given as provided in section twenty-four,

must be filed by the magistrate in the office of the clerk of the county.

SEC. 28. Any person who, in the presence of a court or magistrate, shall assault, or threaten to assault another, or to commit any offence against his person or property, or who shall contend with another with angry words, may be ordered by the court or magistrate to give security, as is provided in section twenty-four, or, if he refuse to do so, may be committed, as provided in section twenty-five.

SEC. 29. A bond to keep the peace shall be deemed broken on a conviction of the person complained against of a breach of the peace.

SEC. 30. Upon the attorney's producing evidence of such conviction to the court of the United States in the territory of Idaho, the court shall order the bond to be prosecuted, and the attorney shall thereupon commence an action on the same, in the name of the people of this territory.

SEC. 31. In the action, the offence stated in the record of conviction shall be alleged as the breach of the bond, and shall be conclusive evidence thereof.

SEC. 32. No security to keep the peace, or be of good behavior, shall be required except as herein prescribed.

SEC. 33. The mayor, or other officer, having the direction of the police in a city, town, or village, shall order a force sufficient to keep the peace to attend any public meeting, when he is satisfied that a breach of the peace is to be apprehended.

SEC. 34. When a sheriff, or other public officer authorized to execute process, shall find, or have reason to apprehend, that resistance will be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, and their aiders and abettors, to be punished according to law.

SEC. 35. The officer shall certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they be proceeded against for their contempt of court.

SEC. 36. Every person commanded by a public officer to assist him in the execution of process, as provided in section thirty-four, who shall, without lawful cause, refuse or neglect to obey the command, shall be deemed guilty of a misdemeanor.

SEC. 37. If it appear to the governor that the power of any county is not sufficient to enable the sheriff to execute

process delivered to him, he shall, on the application of the sheriff, order such military force from any other county or counties as shall be necessary.

SEC. 38. When six or more persons, whether armed or not, shall be unlawfully or riotously assembled, the sheriff of the county and his deputies, or the constables of the county and the justices of the peace, shall go among the persons so assembled, or as near to them as possible, and shall command them, in the name of the people of the United States and territory of Idaho, immediatery to disperse.

SEC. 39. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

SEC. 40. If a person so commanded to aid the magistrates or officers neglect or refuse to do so, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

SEC. 41. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section thirty-eight, neglect to proceed to the place of assembly, or as near thereto as he can, with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he shall be deemed guilty of a misdemeanor.

SEC. 42. If the persons so assembled and commanded to disperse, do not immediately disperse, any magistrate or officer before mentioned may command the aid of a sufficient number of persons, and may proceed in such manner as in his judgment is necessary to disperse the assembly and arrest the offenders.

SEC. 43. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, it shall obey such orders in relation thereto as may have been made by the governor, or by a judge of the court of record, or the sheriff of the county, or by a magistrate mentioned as in section thirty-eight.

SEC. 44. When there is an unlawful or riotous assembly, with the intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of the territory, and the fact is made to appear to the governor, or to a judge of the district court or probate court, or to the sheriff of the county, either of those officers may issue an order, directed to the commanding officer of a division, brigade, regiment, battalion or company, to order his command, or any part thereof, (describing the kind and number of troops), to appear at a time and place therein specified, to aid the civil authorities, in suppressing violence and enforcing the laws.

SEC. 45. The commanding officer to whom the order is given shall forthwith obey the same, and the troops so required shall appear at the time and place appointed, armed and equipped, with amunition as per inspection, and shall execute any order that they shall then and there receive, according to law.

SEC. 46. When the Governor shall be satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted and has not been sufficient to enable the officer having the process to execute it, he may, on the application of the officer, or of the district attorney, or probate judge of the county, by proclamation to be published in such papers as he shall direct, declare the county to be in a state of insurrection; and may order into the service of the territory such number and description of volunteer or uniform companies, or other militia of the territory, as he shall deem necessary, to serve for such term and under the command of such officer or officers as he shall direct.

SEC. 47. The governor may, when he shall think proper, revoke the proclamation authorized by the last section, or declare that it shall cease at such time and in such manner as he shall direct.

SEC. 48. Any person who shall, after the publication of the proclamation authorized by section forty-six, resist or aid in resisting the execution of process in any county so declared to be in a state of insurrection, or who shall aid or attempt the rescue or escape of any person from lawful custody or confinement, or who shall resist or aid in resisting any force ordered out by the governor to quell or suppress an insurrection, shall be punished by imprisonment in a territorial prison, for a term not less than two years.

III.—PROCEEDINGS FOR REMOVAL OF PUBLIC OFFICERS.

SEC. 49. Officer subject to impeachment, how tried.

51. Proceedings to impeach.

60. Two-thirds necessary to convict.

61. Judgment.

65. Officer suspended by articles of impeachment.

66. Indictment not barred by impeachment.

Sec. 67. Proceedings against officers.

76. Trial by jury.

77. Attendance of witnesses.

78. Judgment, appeal.

80. Proceedings against district attorney.

Sec. 49. Any territorial officer, created by territorial law, shall be liable for impeachment for any misdemeanor in office.

Sec. 50. All impeachments shall be tried by the council; when sitting for that purpose, the councilmen shall be upon oath or affirmation.

Sec. 51. When a civil officer of the territory is impeached by the house of representatives for a misdemeanor in office, the articles of impeachment shall be delivered to the President of the council.

Sec. 52. The council shall assign a day for hearing the impeachment, and shall inform the house of representatives thereof. The president of the council shall cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for the hearing.

Sec. 53. The service must be upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the territory, the council, upon due proof of that fact, may order that publication be made in such manner as they deem proper, of a notice requiring him to appear at a specified time and place, and answer to the articles of impeachment.

Sec. 54. If the defendant do not appear, the council, upon proof of service or publication, as provided in the last two sections, may, of their own motion, or for cause shown, assign another day for hearing the impeachment; or may then, or at any other time which they may appoint, proceed, in the absence of the defendant, to trial and judgment.

Sec. 55. When the defendant appears, he must answer the articles of impeachment, which he may do, either by objecting to the sufficiency of the same, or of any article therein, or by denying the truth of the same.

Sec. 56. If the defendant object to the sufficiency of the impeachment, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection. If he deny the truth of the impeachment, the denial may be oral and without oath, and shall be entered upon the journal.

Sec. 57. If an objection to the sufficiency of the impeachment be not sustained by a majority of the members of the council, who heard the argument, the defendant shall be or-

dered forthwith to answer the articles of impeachment. If he plead guilty, or refuse to plead, the council shall render judgment of conviction against him. If he deny the matters charged, the council shall, at such time as they may appoint, proceed to try the impeachment.

SEC. 58. At the time and place appointed, and before the council proceed to act on the impeachment, the secretary shall administer to the president of the council, and the president of the council to each of the members of the council then present, an oath or affirmation truly and impartially to hear, try and determine the impeachment; and no member of the council shall act or vote upon the impeachment, or any question arising thereon, without having taken such oath or affirmation.

SEC. 59. The oath or affirmation having been administered, the council shall proceed to try and determine the impeachment, and may adjourn the trial from time to time.

SEC. 60. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members present; and if two-thirds of the members do not concur in a conviction, he shall be declared acquitted.

SEC. 61. After conviction, the council shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution entered upon the journals of the council. The vote upon the passage thereof shall be taken by yeas and nays, and shall, in like manner, be entered upon the journal.

SEC. 62. On the adoption of the resolution, by a majority of the members present, who voted on the question of acquittal or conviction, the same shall be the judgment of the council.

SEC. 63. The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of honor, trust or profit under this territory.

SEC. 64. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, fees, or emoluments of the office.

SEC. 65. Whenever articles of impeachment against any officer subject to impeachment, shall be presented to the president of the council, such officer shall be temporarily suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any territorial officer, created by territorial law, the governor shall immediately take charge of his office, and such office shall at once be temporarily filled by appointment by the governor,

by and with the advice and consent of the council, until the acquittal of the party impeached; or in case of his removal, then until the vacancy be filled as provided by law.

SEC. 66. If the offence for which the defendant is impeached be the subject of an indictment, the indictment shall not be barred by the impeachment.

SEC. 67. An accusation in writing against any district, county, or township officer, for wilful or corrupt misconduct in office, may be presented by the grand jury of the county for which the officer accused is elected or appointed.

SEC. 68. The accusation shall state the offence charged, in ordinary and concise language, and without repetition.

SEC. 69. The accusation shall be delivered by the foreman of the grand jury to the district attorney of the county, who shall cause a copy thereof to be served upon the defendant, and require by notice, in writing, of not less than ten days, that he appear before the district court then sitting, or at the next term, and answer the accusation. The original accusation shall then be filed with the clerk of the district court.

SEC. 70. The defendant must appear at the time appointed in the notice, and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he do not appear, the court may proceed to hear and determine the accusation in his absence.

SEC. 71. The defendant may answer the accusation, either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

SEC. 72. If he object to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it present intelligibly the grounds of the objection.

SEC. 73. If he deny the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

SEC. 74. If an objection to the sufficiency of the accusation be not sustained, the defendant shall be required to answer the accusation forthwith.

SEC. 75. If the defendant plead guilty, or refuse to answer the accusation, the court shall render judgment of conviction against him. If he deny the matters charged, the court shall immediately, or as soon thereafter as practicable, proceed to try the accusation.

SEC. 76. The trial shall be by a jury, and shall be conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

SEC. 77. The district attorney and the defendant shall be

respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon the trial of an indictment.

SEC. 78. Upon a conviction, the court shall immediately, or within five days, as they may appoint, pronounce judgment that the defendant be removed from office. But to warrant a removal, the judgment must be entered upon the minutes, assigning therein the causes of removal.

SEC. 79. From a judgment of removal, an appeal may be taken to the supreme court, in the same manner as from a judgment in a civil action, but until such judgment be reversed, the defendant shall be suspended from his office. Pending the appeal, the office may be filled as in case of vacancy.

SEC. 80. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation shall be delivered to the district judge of the district, who shall thereupon appoint some one to act as prosecuting officer in the matter, or shall place the accusation in the hands of the district attorney of an adjoining district, and require him to conduct the proceedings.

IV.—PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT.

I.—LOCAL JURISDICTION OF PUBLIC OFFENCES.

SEC. 81. Who amenable to territorial laws.

82. Offences committed out of territory and ended within it.

83. Death by dueling, out of territory.

84. Offences part in one county and part in another.

85. County boundaries, when cognizable, on vessels.

87. Abduction and kidnaping, where cognizable.

88. Bigamy or incest, where cognizable.

89. Property stolen in one and taken into another county, where triable.

90. Accessory, where triable.

91. Trial in another state to bar indictment in certain cases.

92. Trial in one county to bar prosecution in another.

SEC. 81. Every person, whether an inhabitant of this territory or any other state or country, or of a territory or district of the United States, shall be liable to punishment by the laws of this territory for a public offence committed by

him therein, except when it is by law cognizable exclusively in the courts of the United States.

SEC. 82. When the commission of a public offence commenced without this territory, is consummated within the boundaries thereof, the defendant shall be liable to punishment therefor in this territory, though he were without the territory at the time of the commission of the offence charged: *Provided*, That he consummated the offence through the intervention of an innocent or guilty agent without this territory, or any other means proceeding directly from himself, and in such case the jurisdiction shall be in the county in which the offence is consummated.

SEC. 83. When an inhabitant or resident of this territory shall, by any previous appointment or engagement, fight a duel without the jurisdiction of this territory, and in such duel a wound shall be inflicted upon any person whereof he shall die within this territory, the jurisdiction of the offence shall be in the county where the death shall happen.

SEC. 84. When a public offence is committed in part in one county and in part in another, or the acts or effects thereof constituting, or requisite to the consummation of the offence occur in two or more counties, the jurisdiction shall be in either county.

SEC. 85. When a public offence is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction shall be within either county.

SEC. 86. When an offence is committed within this territory on board a vessel navigating a river, bay, slough, or lake, or lying therein, in the prosecution of her voyage, the jurisdiction shall be in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

SEC. 87. The jurisdiction of an indictment for the crime of forcibly stealing, taking or arresting any man, woman or child, in this territory, and carrying him or her into another county, state or territory, or for forcibly taking or arresting any person or persons whomsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, or for hiring, persuading, enticing, decoying or seducing, by false promises, misrepresentations and the like, any negro, mulatto, Indian or colored person to go out of this territory, or to be taken or removed therefrom for the purpose and with the intent to sell such negro, mulatto, colored person or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free

will and consent of such negro, mulatto, Indian or colored person, shall be, in any county in which the offence is committed or into or out of which the person upon whom the the offence was committed may, in the prosecution of the offence, have been brought, or in which an act shall be done by the offender in instigating, procuring, promoting, aiding in or being accessory to the commission of the offence, or in abetting the parties therein concerned.

SEC. 88. When the offence of bigamy or incest is committed in one county, and the defendant is apprehended in another, the jurisdiction shall be in either county.

SEC. 89. When property, feloniously taken in one county, by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offence shall be in either county. But if, at any time before the conviction of the defendant in the latter, he be indicted in the former county, the sheriff of the latter county shall, upon demand, deliver him to the sheriff of the former county, upon being served with a copy of the indictment, and upon receipt, indorsed thereon by the sheriff of the former county, of the body of the offender, and shall, on filing the copy of the indictment and receipt, be exonerated from all liability in respect to the custody of the offender.

SEC. 90. In the case of an accessory before or after the fact in the commission of a public offence, the jurisdiction shall be in the county where the offence of the accessory was committed, notwithstanding the principal offence was committed in another county.

SEC. 91. When an act charged as a public offence is within the jurisdiction of another state or territory, as well as of this territory, a conviction or acquittal thereof in such territory or state shall be a bar to the prosecution or indictment therefor in this territory.

SEC. 92. When an offence is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county shall be a bar to a prosecution or indictment therefor in another.

II.—TIME OF COMMENCING CRIMINAL ACTIONS.

SEC. 93. Murder, no limit to prosecution.

94. Felony, three years.

Sec. 95. Misdemeanor, one year.

96. Time of absence of defendant from territory not included.

97. Indictment, when deemed found.

SEC. 93. There shall be no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

SEC. 94. An indictment for any felony other than murder must be found within three years after its commission.

SEC. 95. An indictment for any misdemeanor must be found within one year after its commission.

SEC. 96. If, when the offence is committed, the defendant be out of the territory, the indictment may be found within the term herein limited after his coming within the territory, and no time during which the defendant is not an inhabitant of, or usually resident within the territory, shall be a part of the limitation.

SEC. 97. An indictment is found, within the meaning of this title, when it is duly presented by the grand jury, in open court, and there received and filed.

SEC. 98. In offences committed before the passage of this act, indictments may be found at any time within the limitation herein above provided, and the time of limitation shall commence after the passage of this act.

III.—COMPLAINT, AND PROCEEDINGS THEREON TO THE COMMITMENT, INCLUSIVE.

Sec. 99. Complaint, magistrate.

101. Who are magistrates.

102. Magistrate to examine complaint on oath.

103. Deposition what to set forth.

104. Warrant of arrest, when to issue, form of.

106. Name of defendant, date and signature of warrant.

107. How executed, peace officers.

109. Warrant, to whom directed.

110. When executed in another county, how indorsed.

111. Proceedings on arrest for felony, same for misdemeanor.

113. Bail to be certified on warrant.

114. Defendant, when to be taken before magistrate.

117. Same, other than the one who issued the warrant.

118. Proceedings on complaint for offence, triable in other county.

Sec. 119. Duty of officer.

- 121. Arrest, by whom to be made.
- 124. At what time to be made, how made.
- 127. Officer to state authority.
- 128. Resistance of defendant, power of officers.
- 131. When may be made without warrant.
- 132. May break open doors, etc., at night.
- 134. Officer to state authority, bystanders.
- 136. Offence committed in presence of magistrate.
- 137. Private persons may make, to state cause.
- 139. May force entrance, etc.
- 140. Duty after arrest, escape and recapture.
- 143. Proceedings after arrest.
- 144. Time to procure counsel, examination.
- 146. Commitment of, form of.
- 149. Depositions to be read, subpoena.
- 150. How witness examined.
- 151. Right of defendant to make statement, right to waiver.
- 153. Proceedings when defendant chooses to make statement, questions.
- 154. Answers, statement to be in writing, authentication of form of.
- 156. Defendant's witnesses, examination of, separately.
- 158. May be conducted with closed doors.
- 159. When defendant discharged, form of.
- 160. Order to hold defendant to answer, form of.
- 161. Offence not bailable, form of order.
- 162. Offences bailable, form of order.
- 164. Commitment, form of.
- 166. Witness to be recognized to appear.
- 169. Failing to recognize to be committed.
- 170. Conditional examination of witness unable to give security for appearance.
- 172. Magistrate to make return to court.

Sec. 99. The complaint is the allegation made to a magistrate that a person has been guilty of some public offence.

Sec. 100. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offence.

Sec. 101. The following persons are magistrates: First. The justices of the supreme court. Second. The probate judges. Third. Justices of the peace, and others upon whom are conferred by law the powers of justices of the peace.

Sec. 102. When a complaint is laid before a magistrate, of the commission of a public offence, triable within the county, he must examine, on oath, the complainant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Sec. 103. The deposition must set forth the facts stated by

the prosecutor and his witnesses, tending to establish the commission of the offence, and the guilt of the defendant.

SEC. 104. If the magistrate be satisfied therefrom that the offence complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

SEC. 105. A warrant of arrest is an order in writing in the name of the people of the United States and territory of Idaho, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:
County of _____.

The people of the United States and territory of Idaho, to any sheriff, constable, or marshal, or policeman, in this territory or in the county of _____: A complaint, upon oath, has been this day laid before me, by A. B., that the crime of (designate it) has been committed, and accusing C. D. thereof; you are therefore commanded forthwith to arrest the above named C. D.. and bring him before me, at (naming the place) or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at _____, this _____ day of _____, 18—.

SEC. 106. The warrant must specify the name of the defendant; if it be unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town, where it was issued, and be signed by the magistrate, with his name of office.

SEC. 107. The warrant must be directed to, and executed by a peace officer.

SEC. 108. Peace officers are sheriffs of counties, and constables, marshals, and policemen of cities and towns respectively.

SEC. 109. If a warrant be issued by a justice of the supreme court, or probate judge, it may be directed generally to any sheriff, constable, marshal or policeman in this territory, and may be executed by any of those officers to whom it may be delivered.

SEC. 110. If it be issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal or policeman in the county in which it is issued, and may be executed in that county; or if the defendant be in another county, it may be executed therein, upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: "This

warrant may be executed in the county of ———," or as the case may be.

SEC. 111. If the offence charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section one hundred and fifteen.

SEC. 112. If the offence charged in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being so required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

SEC. 113. On admitting the defendant to bail, the magistrate shall certify on the warrant the fact of his having done so, and deliver the warrant and recognizance to the officer having charge of the defendant. The officer shall forthwith discharge the defendant from arrest, and shall, without delay, deliver the warrant and recognizance to the clerk of the court at which the defendant is required to appear.

SEC. 114. If, on the admission of the defendant to bail, as provided in section one hundred and twelve, or if bail be not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in the next section.

SEC. 115. When by the preceding sections of this act, the defendant is required to be taken before the magistrate who issued the warrant, he may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate in the same county. The officer shall, at the same time, deliver to the magistrate the warrant, with his return, endorsed and subscribed by him.

SEC. 116. The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

SEC. 117. If the defendant be brought before a magistrate, in the same county, other than the one who issued the warrant, the affidavits on which the warrant was granted, if the defendant insist upon an examination, shall be sent to the magistrate, if they cannot be procured, the prosecutor and his witnesses shall be summoned to give their testimony anew.

SEC. 118. When a complaint is laid before the magistrate, of the commission of a public offence, triable within some other county of this territory, but showing that the defendant is in the county where the complaint is laid, the same proceedings shall be had as prescribed in this act, except that the warrant shall require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offence

is triable, and the depositions of the complainant or prosecutor, and of the witnesses who may have been produced shall be delivered by the magistrate to the officer to whom the warrant is delivered.

SEC. 119. The officer who executes the warrant shall take the defendant before the nearest or most accessible magistrate of the county in which the offence is triable, and shall deliver to such magistrate the depositions and the warrant, with his return endorsed thereon; and such magistrate shall proceed in the same manner as upon a warrant issued by himself.

SEC. 120. If the offence charged in the warrant, issued pursuant to section one hundred and eighteen, be a misdemeanor, the officer shall, upon being so required by the defendant, take him before a magistrate of the county in which the said warrant is issued, who shall admit the defendant to bail, and immediately transmit the warrant, depositions and recognizance to the clerk of the court in which the defendant is required to appear.

SEC. 121. Arrest is the taking of a person into custody, that he may be held to answer for a public offence.

SEC. 122. An arrest may be either: First. By a peace officer, under a warrant. Second. By a peace officer, without a warrant; or, Third. By a private person.

SEC. 123. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present, and acting in its execution.

SEC. 124. If the offence charged be a felony, the arrest may be made on any day and at any time of the day or night. If it be a misdemeanor, the arrest shall not be made at night, unless upon the direction of the magistrate, endorsed upon the warrant.

SEC. 125. An arrest shall be made by an actual restraint of the person of the defendant, or by his submission to the custody of the officers.

SEC. 126. The defendant shall not be subjected to any more restraint than is necessary for his arrest and detention.

SEC. 127. The officer shall inform the defendant that he acts under the authority of the warrant, and shall also show the warrant, if required.

SEC. 128. If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

SEC. 129. The officer may break open any outer or inner door or window of a dwelling-house to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

SEC. 130. An officer may break open any outer or inner door or window of a dwelling-house, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

SEC. 131. A peace officer may, without a warrant, arrest a person: First. For a public offence, committed or attempted in his presence. Second. Where the person arrested has committed a felony, although not in his presence. Third. Where a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it. Fourth. On a charge made upon a reasonable cause, of the commission of a felony by the party arrested.

SEC. 132. To make an arrest, as provided in the last section, the officer may break open any outer or inner door or window of a dwelling-house, if, after notice of his office and purpose, he be refused admittance.

SEC. 133. He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony had not been committed.

SEC. 134. When arresting a person without a warrant, the officer must inform him of his authority, and the cause of the arrest, except when he is in the actual commission of a public offence, or when he is pursued immediately after an escape.

SEC. 135. He may take before a magistrate any person, who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

SEC. 136. When a public offence is committed in the presence of a magistrate, he may, by a verbal order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

SEC. 137. A private person may arrest another: First. For a public offence committed or attempted in his presence. Second. When the person arrested has committed a felony, although not in his presence. Third. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

SEC. 138. He must, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offence, or when he is arrested on pursuit, immediately after its commission.

SEC. 139. If the person to be arrested have committed a felony, and a private person, after notice of his intention to

make the arrest, be refused admittance, he may break open any outer or inner door or window of a dwelling house, for the purpose of making the arrest.

SEC. 140. A private person who has arrested another for the commission of a public offence, must, without unnecessary delay, take him before a magistrate, or deliver him to a peace officer.

SEC. 141. If a person arrested escape, or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the territory.

SEC. 142. To retake the person escaping or rescued, the person pursuing may, after notice of his intention, and refusal of admittance, break open any outer or inner door or window of a dwelling house.

SEC. 143. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offence, the magistrate shall immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had.

SEC. 144. He shall also allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose, and shall, upon the request of the defendant, require a peace officer to take a message to such counsel, within the township or city, as the defendant may name. The officer shall, without delay and without fee, perform that duty.

SEC. 145. The magistrate shall, immediately after the appearance of counsel, or if defendant require the aid of counsel after waiting a reasonable time therefor, proceed to examine the case.

SEC. 146. The examination must be completed at one session, unless the magistrate, for good cause shown, adjourn it. The adjournment cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

SEC. 147. If an adjournment be had for any cause, the magistrate shall commit the defendant for examination; admit him to bail, or discharge him from custody upon the deposit of money, as provided in this act, as security for his appearance at the time to which the examination is adjourned.

SEC. 148. The committee for examination shall be by an indorsement signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B., having been brought before me under this warrant, is committed for examination to the sheriff of the county of —." If the

sheriff be not present, the defendant may be committed to the custody of a peace officer.

SEC. 149. At the examination the magistrate shall, in the first place, read to the defendant the depositions of the witnesses examined on the taking of the information. He shall issue subpoenas for any witnesses required by the prosecutor or the defendant as provided in section five hundred and thirty-five.

SEC. 150. The witnesses shall be examined in the presence of the defendant, and may be cross-examined in his behalf.

SEC. 151. When the examination of witnesses on the part of the people is closed, the magistrate shall distinctly inform the defendant that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him if he see fit, to answer the charge and to explain the facts alleged against him; that he is at liberty to waive making a statement, and that his waiver cannot be used against him on the trial.

SEC. 152. If the defendant waive his right to make a statement, the magistrate shall make note thereof immediately following the depositions of the witnesses against the defendant, but the fact of his waiver shall not be used against the defendant on the trial.

SEC. 153. If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing, without oath, and shall put to the defendant the following questions only: What is your name and age? Where were you born? Where do you reside, and how long have you resided there? What is your business or profession? Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

SEC. 154. The answer of the defendant to each of the questions must be distinctly read to him as it is taken down. He may thereupon correct or add to his answer, and it shall be corrected until it is made conformable to what he declares to be the truth.

SEC. 155. The statement must be reduced to writing by the magistrate, or under his direction, and authenticated in the following form: First. It must set forth in detail that the defendant was informed of his rights, as provided by section one hundred and fifty-one, and that, after being so informed, he made the statement. Second. It must contain the questions put to him and his answers thereto, as provided in sections one hundred and fifty-three and one hundred and fifty-four.

Third. It may be signed by the defendant, or he may refuse to sign it; but if he refuse to sign it, his reason therefor must be stated as he gives it. **Fourth.** It must be signed and certified by the magistrate.

SEC. 156. After the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, shall be sworn and examined.

SEC. 157. The witnesses produced on the part either of the people or of the defendant, shall not be present at the examination of the defendant; and while a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate and to be prevented from conversing with each other until they are all examined.

SEC. 158. The magistrate shall also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel and the officer having the defendant in custody.

SEC. 159. After hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a public offence has not been committed, or there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged, by an endorsement on the depositions and statement signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offence within mentioned I ordered him to be discharged."

SEC. 160. If, however, it appears from the examination that a public offence has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall, in like manner, endorse on the depositions and statement an order signed by him to the following effect: "It appearing to me, by the within depositions and statement (if any), that the offence therein mentioned, (or any other offence according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same."

SEC. 161. If the offence be not bailable, the following words, or words to the same effect, shall be added to the indorsement: "And that he be committed to the sheriff of the county of _____."

SEC. 162. If the offence be bailable, and bail be taken by the magistrate, the following words, or words to the same effect, shall be added to the indorsement: "And I have

admitted him to bail to answer by the recognizance hereto annexed."

SEC. 163. If the offence be bailable, and the defendant be admitted to bail, but bail have not been taken, the following words, or words to the same effect, shall be added to the indorsement mentioned in section one hundred and sixty: "And that he be admitted to bail in the sum of _____ dollars, and be committed to the sheriff of the county of _____, until he gives such bail."

SEC. 164. If the magistrate order the defendant to be committed, as provided in sections one hundred and sixty-one and one hundred and sixty-three, he shall make out a commitment signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed; or, if that officer be not present, to a peace officer, who shall deliver the defendant into the proper custody, together with the commitment.

SEC. 165. The commitment must be to the following effect: "County of _____, (as the case may be). The people of the United States and territory of Idaho, to the sheriff of the county of _____: An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offence, and as near as may be, the time when, and the place where the same was committed), you are commanded to receive him into your custody, and to detain him until he be legally discharged. Dated this _____ day of _____, 18—."

SEC. 166. On holding the defendant to answer, the magistrate shall take from each of the material witnesses examined before him on the part of the people, a written recognizance, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

SEC. 167. Whenever the magistrate shall be satisfied by proof, on oath, that there is reason to believe that any such witness will not fulfil his recognizance to appear and testify, unless security be required, he may order the witness to enter into a written recognizance, with such sureties and in such sum as he may deem meet, for his appearance, as specified in the last section.

SEC. 168. Infants and married women, who are material witnesses against the defendant, may in like manner be required to procure sureties for their appearance, as provided in the last section.

SEC. 169. If a witness required to enter into a recognizance to appear and testify, either with or without sure-

ties, refuse compliance with the order for that purpose, the magistrate shall commit him to prison until he comply or be legally discharged.

SEC. 170. When, however, it shall satisfactorily appear by the examination, on oath, of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people; such examination shall be by question and answer, and shall be conducted in the same manner as the examination before a committing magistrate is required by this act to be conducted, and the witness shall thereupon be discharged.

SEC. 171. The last section shall not apply to the prosecutor, or to an accomplice in the commission of the offence charged.

SEC. 172. When a magistrate has discharged a defendant, or has held him to answer, as provided in sections one hundred and sixty, and one hundred and sixty-one, he shall return, without delay, to the clerk of the court at which the defendant is required to appear, the warrant, if any, the depositions, the statement of the defendant, if he has made one, and all recognizances of bail or for the appearance of witnesses taken by him.

IV.—PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

Sec. 173. Prosecution by indictment, accusation, where found.

176. Grand jury, formation of, challenge to.

178. To the panel, to the polls, how made and tried.

181. Decision on, effect of challenge to panel.

183. Effect of challenge to the polls.

184. Violation, a complaint.

185. Objection to jury only by challenge.

186. Foreman of grand jury, oath of.

188. Oath of others, charge to grand jury.

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196. Trial jurors, how formed.

201. Grand jury, powers and duties of.

202. Indictment, presentment.

204. Oath to witness, evidence to be received.

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Sec. 208. Indictment when to be found, information by member of.

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211. To have free access to prisons, etc.

212. Advice to, who allowed to be present.

213. Proceedings to be kept secret.

214. When may be witness.

215. Not to be questioned relative to facts.

216. Presentment, how found, not to be disclosed.

219. Disclosure, how punished.

220. Bench warrants, when to issue, form of.

223. How executed, proceedings on arrest.

Sec. 173. All public offences prosecuted in the district court must be prosecuted by indictment, except as provided in the next section.

Sec. 174. Where the proceedings are had for the removal of district, county, or township officers, they may be commenced by an accusation in writing, as provided in sections sixty-seven and eighty.

Sec. 175. All accusations against district, county, and township officers, and all indictments, must be found in the district court.

Sec. 176. The formation of grand juries is prescribed by special statutes.

Sec. 177. A challenge may be taken to the panel of the grand jury, or to any individual grand juror, in the cases hereinafter prescribed, by the people or by the defendant.

Sec. 178. A challenge to the panel may be interposed for one or more of the following causes: First. That the requisite number of ballots was not drawn from the jury box of the county as prescribed by law. Second. That the notice of the drawing of the grand jury was not given as prescribed by law. Third. That the drawing was not had in the presence of the officers designated by law.

Sec. 179. A challenge to an individual grand juror may be interposed for one or more of the following causes only: First. That he is a minor. Second. That he is an alien. Third. That he is insane. Fourth. That he is the prosecutor upon a charge against the defendant. Fifth. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such. Sixth. That he has formed or expressed a decided opinion that the defendant is guilty of the offence for which he is held to answer.

Sec. 180. The challenges mentioned in the last three sections may be oral, and shall be entered upon the minutes, and tried by the court in the same manner as chal-

lenges in the case of a trial jury which are triable by the court.

SEC. 181. The court shall allow or disallow the challenge, and the clerk shall enter its decisions in the minutes.

SEC. 182. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charge against the defendant by whom the challenge was interposed. If they should, notwithstanding, do so, and find an indictment against him, the court shall direct the indictment to be set aside.

SEC. 183. If a challenge to an individual grand juror be allowed, he shall not be present at, or take part in, the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon.

SEC. 184. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt.

SEC. 185. A person held to answer to a charge for a public offence, can take advantage of any objection to the panel or to an individual grand juror, in no other mode than that by challenge, as prescribed in the preceding section.

SEC. 186. From the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman. The court shall also appoint a foreman when the person already appointed is discharged, or excused, before the grand jury is dismissed.

SEC. 187. The following oath shall be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire into, and true presentment make, of all public offences against the people of the United States in the Territory of Idaho, committed or triable within the jurisdiction of this court, of which you shall have or can obtain legal evidence. You shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

SEC. 188. The following oath shall be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you, and each of you, shall well and truly observe on your part, so help you God."

SEC. 189. The grand jury being empaneled and sworn, shall be charged by the court. In doing so, the court shall

every person imprisoned in the jail of the county, on a criminal charge, and not indicted; into the condition and management of the public prisons within the county; and into the wilful and corrupt misconduct in office of public officers of every description within the county.

SEC. 211. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examinations, without charge, of all public records within the county.

SEC. 212. The grand jury may, at all reasonable times, ask the advice of the court, or any member thereof, and of the district attorney. Unless his advice be asked, no member of the court shall be permitted to be present during the session of the grand jury. The district attorney shall be allowed, at all times, to appear before the grand jury, on his request, for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them, when they shall deem it necessary. Except the district attorney, no person shall be permitted to be present before the grand jury, besides the witnesses actually under examination; and no person shall be permitted to be present during the expression of their opinions or the giving of their votes upon any matter before them.

SEC. 213. Every member of the grand jury shall keep secret whatever he himself, or any other grand juror, may have said, or in what manner he, or any other grand juror may have voted on a matter before them.

SEC. 214. A member of the grand jury may, however, be required by the court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

SEC. 215. No grand juror shall be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow-jurors.

SEC. 216. A presentment cannot be found without the concurrence of at least twelve grand jurors. When so found, it must be signed by the foreman.

SEC. 217. The presentment, when found, must be presented by the foreman, in the presence of the grand jury, to the court, and shall be filed by the clerk.

SEC. 218. No grand juror, district attorney, clerk, judge or other officer shall disclose the fact of a presentment having

been made for a felony, until the defendant shall have been arrested. But this prohibition shall not extend to disclosure by the issuing or in the execution of a warrant to arrest the defendant.

SEC. 219. A violation of the provisions of the last section shall be punishable as a contempt.

SEC. 220. If the court deem that the facts stated in the presentment constitute a public offence, triable within the county, it shall direct the clerk to issue a bench warrant for the arrest of the defendant.

SEC. 221. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant, under his signature and the seal of the court, into one or more counties.

SEC. 222. The bench warrant, upon presentment, shall be substantially in the following form:

County of ____.

The people of the United States, of the territory of Idaho, to any sheriff, constable, marshal or policeman in this territory: A presentment having been made, on the ____ day of ____, 18____, to the district court of the district of ____, charging C. D. with the crime of ____ (designating it generally); you are therefore commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this county, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in this county.

Given under my hand, with the seal of the said court affixed, this ____ day of ____, A. D. 18____. By order of the court. G. H., Clerk.

SEC. 223. The bench warrant may be served in any county, and the officer serving it shall proceed thereon in all respects as upon a warrant of arrest on a complaint, except that when served in another county it need not be indorsed by a magistrate of that county.

SEC. 224. The magistrate, when the defendant is brought before him, shall proceed to examine the charge contained in the presentment, and hold the defendant to answer the same, or discharge him therefrom, in the same manner in all respects, as upon a warrant of arrest on complaint.

V.—THE INDICTMENT.

SEC. 225. How found, dismissal of charge.

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- 229.** To be presented to court, against defendant not in custody.
- 231.** Pleadings, indictment, what to contain, form of.
- 236.** Error in name of defendant.
- 237.** To charge only one offence.
- 238.** Manner of stating time of offence.
- 239.** Erroneous allegations not material.
- 240.** Construction of indictment.
- 241.** Statute words not strictly followed.
- 242.** Indictment, when sufficient.
- 243.** Matters of form not vitiated, what need not be stated.
- 245.** Judgment how pleaded, private statute, how pleaded.
- 247.** Indictment for libel, what to set forth.
- 248.** Misdescription of forged instruments when immaterial.
- 249.** Perjury, indictment for, what to set forth.
- 250.** Indictment against several defendants.
- 251.** No distinction between principal and accessory.
- 252.** Accessory after the fact.
- 253.** Compounding offence, indictment for.
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- 258.** Warrant for arrest, form of, proceedings on.
- 261.** Form of warrant when offence not capital.
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- 266.** Defendant to be committed, counsel for defendant.
- 268.** Arraignment, how made, defendant to declare true name.
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- 306.** Application, how, when and to what court order made.
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347. Other testimony, court to determine law and facts.
349. Instruction to triers, decision final.
351. Order of taking challenges, final peremptory challenge.

Sec. 225. An indictment cannot be found without the concurrence of at least twelve grand jurors; when so found, it shall be indorsed "a true bill," and the indorsement shall be signed by the foreman of the grand jury.

Sec. 226. If twelve grand jurors do not concur in finding an indictment against a defendant who has been held to answer, the deposition and statement, if any, transmitted to them, shall be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

Sec. 227. The dismissal of the charge shall not, however, prevent the same charge from being again submitted to a grand jury, or as often as the court shall so direct. But without such direction, it shall not be again submitted.

Sec. 228. When an indictment is found, the names of the witnesses examined before the grand jury shall be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Sec. 229. An indictment, when found by the grand jury, shall be presented by their foreman, in their presence, to the court, and shall be filed with the clerk, and remain in his office as a public record.

Sec. 230. When an indictment has been found against a defendant not in custody, the same proceedings shall be had as are prescribed in sections two hundred and fifty-seven and two hundred and sixty-four, both inclusive, against a defendant who fails to appear for arraignment.

Sec. 231. All the forms of pleading in criminal actions,

and the rules by which the sufficiency of pleadings is to be determined, shall be those which are prescribed by this act.

SEC. 232. The first pleading on the part of the people is the indictment.

SEC. 233. The indictment shall contain the title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties; a statement of the acts constituting the offence, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 234. It may be substantially in the following form:

The people of the United States, of the territory of Idaho, against A. B., in the district court of the judicial district in the county of ———, ——— term, A. D., 18—. A. B., is accused by the grand jury of the county of ———, by this indictment, of the crime of (giving its legal appellation such as murder, arson, manslaughter, or the like, or designating it as felony or misdemeanor), committed as follows:

The said A. B., on the ——— day of ———, A. D., 18—, at the county of ———, (stating the act or omission constituting the offence, in the manner prescribed in this act, according to the forms mentioned in the next section, where they are applicable)."

SEC. 235. The indictment must be direct, and contain as it regards: First. The party charged. Second. The offence charged, when they are necessary to constitute a complete offence.

SEC. 236. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceeding his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

SEC. 237. The indictment shall charge but one offence, but it may set forth that offence in different forms under different courts.

SEC. 238. The precise time at which it was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding of the same, except when the time is a material ingredient of the offence.

SEC. 239. When an offence involves the commission, or an attempt to commit private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured shall not be deemed material.

SEC. 240. The words used in an indictment shall be construed in the usual acceptance in the common language, except

such words and phrases as are defined by law, which are to be construed according to their legal meaning.

SEC. 241. Words used in a statute to define a public offence, need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

SEC. 242. The indictment shall be sufficient if it can be understood therefrom: First. That it is entitled in a court having authority to receive it, though the name of the court be not accurately set forth. Second. That it was found by a grand jury of the county in which the court was held. Third. That the defendant is named, or if his name cannot be discovered, that he be described by a fictitious name, with a statement that he has refused to disclose his real name. Fourth. That the offence was committed at some place within the jurisdiction of the court. Fifth. That the offence was committed at some time prior to the time of finding the indictment. Sixth. That the act or omission charged as the offence is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. Seventh. That the act or omission charged as the offence is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction according to the right of the case.

SEC. 243. No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon, be affected by reason of any defect or imperfection in matters of form which shall not tend to the prejudice of the defendant.

SEC. 244. Neither presumption of law, nor matters of which judicial notice is taken, need be stated in the indictment.

SEC. 245. In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated, but it may be stated that the judgment or determination was duly made, or the proceeding duly had before such court or officer. The facts constituting the jurisdiction, however, must be established on the trial.

SEC. 246. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to the statute by its title and the day of its passage, and the court shall, thereupon take judicial notice thereof.

SEC. 247. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state generally

that the same was published concerning him, and the fact that it was so published must be established on the trial.

SEC. 248. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

SEC. 249. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy, or matter in respect to which the offence was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission, or the authority of the court or person before whom the perjury was committed.

SEC. 250. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

SEC. 251. No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, in cases of felony; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence, or aid or abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals.

SEC. 252. An accessory after the fact to the commission of a felony, may be indicted and punished, though the principal felon may be neither tried nor indicted.

SEC. 253. A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity, or a reward, or an engagement, or understanding, express or implied, to compound or conceal the offence, or to abstain from the prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offence have not been indicted or tried.

SEC. 254. When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found, except in the cases mentioned in sections two hundred and seventy-five and two hundred and seventy-six.

SEC. 255. If the indictment be for a felony, the defendant must be personally present; but for a misdemeanor, his per-

sonal appearance is unnecessary, and he may appear upon the argument by counsel.

SEC. 256. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned, and the officer shall do so accordingly.

SEC. 257. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the recognizance or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 258. The clerk, on the application of the district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

SEC. 259. The bench warrant upon the indictment shall, if the offence be a felony, be substantially in the following form :

County of _____. The people of the United States, of the territory of Idaho, to any sheriff, constable, marshal, or policeman in this territory : An indictment having been found on the _____ day of _____, A. D. 18—, in the district court of the judicial district of the county of _____, charging C. D. with the crime of _____ (designating it generally); you are therefore commanded forthwith to arrest the above named C. D., and bring him before that court to answer the indictment ; or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of _____. Given under my hand, with the seal of the court affixed, this the _____ day of _____, A. D. 18—. [Seal.] By order of the court. E. F., clerk.

SEC. 260. The defendant, if the offence be punishable with death, when arrested under the warrant, shall be held in custody by the sheriff of the county in which the indictment is found.

SEC. 261. If the offence be not capital, the bench warrant shall be in similar form, adding to the body thereof a direction to the following effect : "Or if he require it, that you take him before any magistrate in that county, or in the district in which you arrested him, that he may give bail to answer to the indictment."

SEC. 262. If the offence charged be not capital, the court, upon directing the bench warrant to issue, shall fix the amount of bail, and an indorsement shall be made upon the bench warrant, signed by the clerk, to the following effect : "The

defendant is to be admitted to bail in the sum of _____ dollars."

SEC. 263. The bench warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county, it need not be endorsed by a magistrate of the county.

SEC. 264. If the defendant be brought before a magistrate of another county for the purpose of giving bail, the magistrate shall proceed in all respects thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings may be had thereon as provided in sections one hundred and eleven and one hundred and fourteen, both inclusive.

SEC. 265. When the indictment is for felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order.

SEC. 266. If such order be made, and the defendant be present, he shall be forthwith committed accordingly. If he be not present, a bench warrant shall be issued and proceeded upon in the manner provided for in this act.

SEC. 267. If the defendant appear for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and shall be asked if he desires the aid of counsel.

SEC. 268. The arraignment must be made by the court, or by the clerk or district attorney, under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereof and of the indorsements thereon, including the list of witnesses endorsed on it, and in asking him whether he pleads guilty or not guilty to the indictment.

SEC. 269. When the defendant is arraigned he shall be informed that if the name by which he is indicted be not his true name, he must then declare his true name or be proceeded against by the name in the indictment.

SEC. 270. If he give no other name, the court may proceed accordingly.

SEC. 271. If he alleges that another name is his true name, the court shall direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring, also, to the name by which he is indicted.

SEC. 272. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time

may be allowed him as the court may deem reasonable, to answer the indictment.

SEC. 273. If the defendant do not require time as provided in the last section, or if he do, then, on the next day, or at such further day as the court may have allowed him, he may answer to the arraignment, and either move the court to set aside the indictment or may demur or plead thereto.

SEC. 274. The indictment shall be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases: First. When it is not found, endorsed, and presented as prescribed in this act. Second. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon. Third. When any person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment is under consideration, except as provided in section two hundred and twelve.

SEC. 275. When the defendant has not been held to answer before the finding of the indictment, he may move to set it aside on any ground which would have been good ground for challenge, either to the panel or any individual grand juror.

SEC. 276. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the last two sections.

SEC. 277. The motion shall be heard when it is made, unless for good cause the court shall postpone the hearing to another time.

SEC. 278. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

SEC. 279. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he have deposited money instead of bail, that the same shall be refunded to him, unless it direct that the case be re-submitted to the same or another grand jury.

SEC. 280. If the court direct that the case be re-submitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or, if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

SEC. 281. Unless a new indictment be found before the next grand jury of the district is discharged, the court shall,

on the discharge of such grand jury, make the order prescribed in section two hundred and seventy-nine.

SEC. 282. An order to set aside an indictment, as provided in this act, shall be no bar to a future prosecution for the same offence.

SEC. 283. The only pleading on the part of the defendant is either a demurrer or a plea.

SEC. 284. Both the demurrer and the plea must be put in, in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose.

SEC. 285. The defendant may demur to the indictment when it shall appear upon the face thereof, either: First. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the local jurisdiction of the court. Second.. That it does not substantially conform to the requirements of sections two hundred and thirty-three and two hundred and thirty-four. Third. That more than one offence has been charged in the indictment. Fourth. That the facts stated do not constitute a public offence. Fifth. That the indictment contains any matter which, if true, would constitute a legal justification, or excuse of the offence charged, or other bar to the prosecution.

SEC. 286. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it shall be disregarded.

SEC. 287. Upon the demurrer being filed, the objections presented thereby shall be heard either immediately, or at such time as the court may appoint.

SEC. 288. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an order to that effect shall be entered on the minutes.

SEC. 289. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution of the same offence, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

SEC. 290. If the court do not direct the case to be resubmitted, the defendant, if in custody, shall be discharged, or if admitted to bail, his bail shall be exonerated, or if he has deposited money instead of bail, the money shall be refunded to him.

SEC. 291. If the court direct that the case be resubmitted anew, the same proceedings must be had thereon as are pre-

scribed in sections two hundred and eighty and two hundred and eighty-one.

SEC. 292. If the demurrer be disallowed, the court shall permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow. If he do not plead, the court shall direct the plea of not guilty to be entered for him.

SEC. 293. When the objections mentioned in section two hundred and eighty-five appear upon the face of the indictment, they can only be taken advantage of by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

SEC. 294. There are three kinds of pleas to an indictment. A plea of—First. Guilty. Second. Not guilty. Third. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of “not guilty.”

SEC. 295. Every plea shall be oral, and shall be entered upon the minutes of the court.

SEC. 296. The plea shall be entered in substantially the following form: First. If the defendant plead guilty, “the defendant pleads that he is guilty of the offence charged in this indictment.” Second. If he plead not guilty, “the defendant pleads that he is not guilty of the offence charged in the indictment.” Third. If he plead a former acquittal or conviction, “the defendant pleads that he has already been convicted (or acquitted, as the case may be) of the offence charged in the indictment, by the judgment of the court of _____, (naming it) rendered at _____, (naming the place) on the _____ day of _____.”

SEC. 297. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

SEC. 298. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

SEC. 299. The plea of not guilty shall be deemed a denial of every material allegation in the indictment.

SEC. 300. All matters of fact, tending to establish a defence, may be given in evidence, under the plea of not guilty.

SEC. 301. If the defendant were formerly acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indict-

ment, it shall not be deemed an acquittal of the same offence.

SEC. 302. When, however, he shall have been acquitted on the merits, he shall be deemed acquitted of the offence, notwithstanding any defect, in form or substance, in the indictment on which he was acquitted.

SEC. 303. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former, or for an attempt to commit the same, or for an offence necessarily included therein, of which he might have been convicted under that indictment, as provided in section four hundred and eleven.

SEC. 304. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered.

SEC. 305. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending, on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.

SEC. 306. The application must be made in open court, and in writing, verified by the affidavit of the defendant, and a copy of said affidavit must be served on the district attorney, at least one day before the application is made to the court.

SEC. 307. If the court be satisfied that the representation of the defendant is true, an order shall be made for the removal of the action to the district court of a county which is free from the like objection.

SEC. 308. The order of removal shall be entered on the minutes, and the clerk shall immediately make out and transmit a certified copy of the entry, with a certified copy of the record, pleadings, and proceedings in the action, including the recognizances for the appearance of the defendant, and of the witnesses, to the court to which the action is removed.

SEC. 309. If the defendant be in custody, the order shall direct his removal by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed, and he shall be forthwith removed accordingly.

SEC. 310. The court to which the action is removed shall proceed to trial and judgment therein, as if the action had been commenced in such court. If it be necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed shall, at any time, on application of the district attorney, or the de-

fendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

SEC. 311. An issue of fact arises—First. Upon a plea of not guilty; or Second. Upon a plea of a former conviction or acquittal of the same offence.

SEC. 312. An issue of fact must be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the court into some other county.

SEC. 313. Trial juries for criminal actions shall be formed in the same manner as trial juries in civil actions.

SEC. 314. The clerk shall keep a docket of all the criminal actions pending in the court, in which he shall enter each indictment, according to the date of filing, specifying opposite the title of each action, whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail.

SEC. 315. The issues on the docket shall be disposed of in the following order, unless upon the application of either party, for good cause shown by affidavit, and upon two days' notice to the opposite party, with a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order—First. Indictments for felony when the defendant is in custody. Second. Indictments for misdemeanor when the defendant is in custody. Third. Indictments for felony when the defendant is on bail. and, Fourth, Indictments for misdemeanor when the defendant is on bail.

SEC. 316. After his plea, the defendant shall have at least two days to prepare for his trial if he require it.

SEC. 317. When an indictment is called for trial, the court may, upon sufficient cause shown by affidavit, direct the trial to be postponed to another day of the same term, or the next term.

SEC. 318. A challenge is an objection made to the trial jurors, and is of two kinds—First. To the panel. Second. To an individual juror.

SEC. 319. When several defendants are tried together, they are not allowed to sever their challenges, but must join therein.

SEC. 320. A panel is a list of jurors returned by a sheriff to serve at a particular court, or for the trial of a particular cause.

SEC. 321. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

SEC. 322. A challenge to the panel can only be found on a material departure from the forms described by statute in

respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

SEC. 323. A challenge to the panel must be taken before a juror is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the grounds of challenge.

SEC. 324. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but shall be entered on the minutes of the court.

SEC. 325. Upon the exception, the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

SEC. 326. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may, in like manner, permit an amendment of the challenge.

SEC. 327. If the challenge be denied, the denial may, in like manner, be oral, and shall be entered on the minutes of the court, and the court shall proceed to try the question of fact.

SEC. 328. Upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the grounds of challenge.

SEC. 329. When the panel is formed from persons whose names are not drawn from the grand jury box, a challenge may be made to the panel on account of any bias of the officer who summoned the jury, which would be good grounds of challenge to a juror. Such objection shall be made in the same form and determined in the same manner as when made to a juror.

SEC. 330. If, either upon an exception to the challenge or a denial of the fact, the challenge be allowed, the court shall discharge the jury, so far as the trial of the indictment in question is concerned. If it be disallowed, the court shall direct the jury to be empaneled.

SEC. 331. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intend to challenge any individual juror, he must do so when the juror appears, and before he is sworn.

SEC. 332. A challenge to an individual juror is either—
First. Peremptory; or Second. For cause.

SEC. 333. It must be taken when the juror appears, and

before he is sworn, but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

SEC. 334. A peremptory challenge may be taken by either party, and may be oral. It is not an objection to a juror, for which no reason need be given, but upon which the court shall exclude him,

SEC. 335. If the offence charged be punishable with death, or with imprisonment in the territorial prison for life, the defendant is entitled to twenty, and the territory to five, peremptory challenges. On a trial for any other offence, the defendant is entitled to ten, and the territory to three peremptory challenges.

SEC. 336. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either—First. General, that the juror is disqualified from serving in any case; or, Second. Particular, that he is disqualified from serving in the case on trial.

SEC. 337. General cases of challenges are—First. A conviction for felony. Second. A want of any of the qualifications prescribed by statute to render a person a competent juror. Third. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body as renders him incapable of performing the duties of a juror.

SEC. 338. Particular cases of challenge are of two kinds: First. For such a bias as, when the existance of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this act as implied bias. Second. For the existance of a state of mind on the part of the juror in reference to the case which, in the exercise of a sound discretion on the part of the trier, leads to the inference that he will not act with entire impartiality, and which is known in this act as actual bias.

SEC. 339. A challenge for implied bias may be taken for all or any of the following causes, and for no other: First. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant. Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages. Third. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution. Fourth.

Having served on the jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment. Fifth. Having served on a trial jury which has tried another person for the offence charged in the indictment. Sixth. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it. Seventh. Having served as a juror in a civil action brought against the defendant for the act charged as an offence. Eighth. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty of the offence charged. Ninth. If the offence charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

SEC. 340. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

SEC. 341. In a challenge for implied bias, one or more of the causes stated in section three hundred and thirty-nine must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the court.

SEC. 342. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings shall be had thereon as prescribed in sections three hundred and twenty-four and three hundred and twenty-five, except that if the exception be allowed, the juror shall be excluded. He may orally deny the facts alleged as the ground of challenge.

SEC. 343. If the facts be denied, the challenge shall be tried as follows: First. If it be for implied bias, by the court. Second. If it be for actual bias, by triers.

SEC. 344. The triers shall be three impartial persons, not on the jury panel, appointed by the court. All challenges for actual bias shall be tried by three triers thus appointed, a majority of whom may decide.

SEC. 345. The triers shall be sworn generally to inquire whether or not the several persons who may be challenged, and in respect to whom the challenges shall be given to them in charge, are biased against the challenged party, and to decide the same truly, according to the evidence.

SEC. 346. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to

prove or disprove the challenge, and shall be compelled to answer every question pertinent to the inquiry therein.

SEC. 347. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony, on the trial of the challenge.

SEC. 348. On the trial of a challenge for implied bias, the court shall determine the law and the facts, and shall either allow or disallow, the challenge and direct an entry accordingly on the minutes.

SEC. 349. On the trial of a challenge for actual bias, when the evidence is concluded, the court shall instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial, and that it, from the evidence, they believe him free from such a bias, they must find the challenge not true. The court shall give them no other instructions.

SEC. 350. The triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror shall be excluded.

SEC. 351. All challenges to an individual juror, except peremptory, must be first taken by the defendant and then by the people, and each party must exhaust all his challenges to each juror as he is called, before the other begins.

SEC. 352. The challenges of either party need not all be taken at once, but they must be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class: First. To the panel. Second. To an individual juror for a general disqualification. Third. To an individual juror for implied bias. Fourth. To an individual juror for actual bias.

SEC. 353. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted.

VI.—TRIAL.

SEC. 354. Trial, order of.

355. When prescribed may be departed from.

356. Counsel, number of, innocence presumed.

358. Reasonable doubt of guilt, degrees of.

359. When defendant may be tried separately.

- 360. When defendant may turn states evidence.
- 361. When defendant may be witness for co-defendant.
- 362. Discharge deemed acquittal, rape proof of.
- 364. Accomplice, evidence of to be corroborated.
- 365. Proceedings where facts show offence greater than charge.
- 367. When jury may be discharged, when defendant discharged.
- 369. Proceedings when exclusive jurisdiction of offence in other county.
- 370. Clerk to transmit papers, when defendant discharged.
- 372. Proceedings on arrest in such cases.
- 373. Proceedings when facts do not constitute offence.
- 374. Proceedings when case submitted anew.
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SEC. 354. The jury having been empaneled and sworn, the trial shall proceed in the following order: First. If the indictment be for felony, the clerk must read the indictment and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with. Second. The district attorney or other counsel for the people must open the cause and offer the evidence in support of the indictment. Third. The defendant or his counsel may then open the defense, and offer the evidence in support thereof. Fourth. The parties may then respectively offer rebutting testimony only,

unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original cause. Fifth. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the people must open and must conclude the argument. Sixth. The judge shall then charge the jury, if requested by either party; he may state the testimony and declare the law, but shall not charge the jury in respect to matters of fact. Such charge shall be reduced to writing before it is given, and in no case shall any charge or instructions be given to the jury, otherwise than in writing, unless by the mutual consent of the parties.

SEC. 355. When the state of the pleadings require it, or in any other case, for good reasons and in the sound discretion of the court, the order prescribed in the last section may be departed from.

SEC. 356. If the indictment be for an offence punishable with death, two counsel on each side may argue the cause to the jury—in which case they must do so alternately. If it be for any other offence, the court may, in its discretion, restrict the argument to one counsel on each side.

SEC. 357. A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt whether his guilt be satisfactorily shown, he is entitled to be acquitted.

SEC. 358. When it legally appears that a defendant has committed a public offence, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

SEC. 359. When two or more defendants are jointly indicted for any offence, they shall be jointly tried—unless, for good cause shown by the prosecution or defence, the court shall otherwise direct.

SEC. 360. When two or more persons are included in the same indictment, the court may at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

SEC. 361. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it shall order him to be discharged from the indictment, before the evidence shall be deemed closed, that he may be a witness for his co-defendant.

SEC. 362. The order mentioned in the two last sections

shall be deemed an acquittal of the defendant discharged, and shall be a bar to another prosecution for the same offence.

SEC. 363. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

SEC. 364. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offence; and the corroboration shall not be sufficient if it merely show the commission of the offence or the circumstances thereof.

SEC. 365. If it appear by the testimony that the facts proved constitute an offence of a higher nature than that charged in the indictment, the court may direct the jury to be discharged, and all proceeding on the indictment to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new indictment which may be found against him for the higher offence.

SEC. 366. If an indictment for the higher offence be dismissed by the grand jury, or be not found at or before the next term, the court shall again proceed to try the defendant on the original indictment.

SEC. 367. The court may also direct the jury to be discharged when it appears that it has not jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence punishable by law.

SEC. 368. If the jury be discharged because the court has not jurisdiction of the offence charged in the indictment, and it appears that it was committed out of the jurisdiction of this territory, it shall order the defendant to be discharged.

SEC. 369. If the offence were committed within the exclusive jurisdiction of another county of this territory, the court shall direct the defendant to be committed for such time as shall be deemed reasonable, to await a warrant from the proper county for his arrest; or if the offence be a misdemeanor only, it may admit him to bail in a recognizance, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly designated in the recognizance, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, and to be mentioned in the recognizance.

SEC. 370. In the case provided for in the last section, the clerk shall forthwith transmit a certified copy of the indict-

ment, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission shall be chargeable to that county.

SEC. 371. If the defendant be not arrested, as provided in section three hundred and sixty-nine, on a warrant from the proper county, he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail shall be refunded, as the case may be, and the sureties in the recognizance shall be discharged.

SEC. 372. If he be arrested, the same proceeding shall be had thereupon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

SEC. 373. If the jury be discharged because the facts as charged do not constitute an offence punishable by law, the court shall order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in the opinion of the court a new indictment can be framed, upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another grand jury.

SEC. 374. If the court direct that the case be submitted anew, the same proceedings must be had thereon as are prescribed in sections two hundred and eighty and two hundred and eighty-one, both inclusive.

SEC. 375. If, at any time after the evidence on either side is closed, the court deem the same insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury shall not be bound by such advice, nor shall the court for any cause prevent the jury from giving a verdict, except as provided in sections three hundred and sixty, three hundred and sixty-one, three hundred and sixty-five, and three hundred and sixty-seven.

SEC. 376. Whenever, in the opinion of the court, it is proper that the jury should view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which shall be shown to them by a person appointed by the court for that purpose.

SEC. 377. No person shall be suffered to speak to the jury on any subject connected with the trial, and the officer shall return them into court without unnecessary delay, or at a specified time.

SEC. 378. If a juror have any personal knowledge respecting a fact in controversy in the case, he must declare the same

in open court, during the trial. If, during the retirement of the jury, a juror declare any fact which could be evidence in the case, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness, and examined in the presence of the parties.

SEC. 379. The jury sworn to try an indictment for a misdemeanor may, at any time during the trial, in the discretion of the court, be allowed to separate. In all cases, on the trial of an indictment for felony, the jurors sworn shall be kept together until they are finally discharged by the court from further consideration of the cause. At each adjournment or recess of the court, which may occur during the trial, the sheriff, or his deputy, shall keep the jury together in his charge, and it shall be the duty of the sheriff, at the expense of the county, to provide a suitable place for the board and lodging of the jury. The court, at each recess or adjournment during the trial, shall administer to the sheriff, or his deputy, the following oath: "You do solemnly swear that you will, during this recess or adjournment (as the case may be), keep this jury together, and that you will return them into court at the opening thereof, and that in the meantime you will not allow any person to speak to them, or either of them, nor speak to them, or either of them, yourself, on the subject of the case now on trial; so help you God."

SEC. 380. The jury shall also, at each adjournment of the court, whether they be permitted to separate or be kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or with any one else, on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

SEC. 381. If, before the conclusion of the trial, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn, and the trial begun anew, or the jury may be discharged, and a new jury then or afterward empaneled.

SEC. 382. The court shall decide all question of law which shall arise in the course of the trial.

SEC. 383. On the trial of an indictment for libel, the jury shall have the right to determine the law and the fact.

SEC. 384. On the trial of an indictment for any other offence than libel, questions of law are to be decided by the court, saving the right of the defendant to except questions of fact by the jury. And, although the jury have the power to find a general verdict, which includes questions of law as well

as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

SEC. 385. In charging the jury, the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

SEC. 386. Either party may present to the court any written charge, and request that it may be given. If the court think it correct and pertinent, it shall be given, if not, it shall be refused.

SEC. 387. Upon each charge so presented, and given or refused, the court shall endorse its decision, and shall sign it. If part be given and part refused, the court shall distinguish, showing by the endorsement what part of the charge was given and what part refused.

SEC. 388. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not permit any person to speak to them, nor to speak to them themselves, unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

SEC. 389. When a defendant, having given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county to abide the judgment or further order of the court, and he shall be committed and held in custody accordingly.

SEC. 390. A room shall be provided by the sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery, unless the same have been already furnished by the county; the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, shall be a county charge.

SEC. 391. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

SEC. 392. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the case, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession, and also the instructions of the court.

SEC. 393. The jury may also take with them notes of the

testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

SEC. 394. After the jury have retired for deliberation, if there be any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the district attorney, and the defendant or his counsel.

SEC. 395. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

SEC. 396. Except as provided in the last section, the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties entered upon the minutes, or unless, at the expiration of such time as the court shall deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

SEC. 397. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term.

SEC. 398. While the jury are absent, the court may adjourn from time to time, as to other business; but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

SEC. 399. A final adjournment of the court discharges the jury.

SEC. 400. When two or more counties are joined for judicial purposes, the expenses accruing from the trial of cases shall be assigned to the county in which the offence was committed, for which trial was had.

SEC. 401. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest shall be discharged, without giving a verdict. In such a case, the cause may be again tried at the same or another term.

SEC. 402. If the indictment be for a felony, the defendant

must, before the verdict, appear in person. If it be for a misdemeanor, the verdict may be rendered in his absence.

SEC. 403. If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon a verdict; and if the foreman answer in the affirmative, they shall on being required, declare the same.

SEC. 404. The jury may either render a general verdict, or when they are in doubt of the legal effect of the facts proved, they may, except upon an indictment for libel, find a special verdict.

SEC. 405. A general verdict, upon a plea of not guilty, is either "guilty" or "not guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offence, it is either "for the people," or "for the defendant."

SEC. 406. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact, as established by evidence, and not the evidence to prove them: and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

SEC. 407. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury and agreed to by them before they are discharged.

SEC. 408. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury.

SEC. 409. The court shall give judgment upon the special verdict, as follows: First. If the plea be not guilty, and the facts prove the defendant guilty of the offence charged in the indictment, or of any other offence of which he could be convicted, as provided in section four hundred and eleven, under that indictment, judgment shall be given accordingly; but if the facts found do not prove the defendant guilty of the offence charged, or of any offence of which he could be so convicted under the indictment, judgment of acquittal shall be given. Second. If the plea be a former conviction or acquittal of the same offence, the court shall give judgment of acquittal or conviction, according as the facts prove or fail to prove the former conviction or acquittal.

SEC. 410. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of facts from the evidence as

established to their satisfaction, the court shall order a new trial.

SEC. 411. In all cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that with which he is charged in the indictment, or may be found guilty of an attempt to commit the offence charged.

SEC. 412. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly; and the case as to the rest may be tried by another jury.

SEC. 413. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after such reconsideration they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

SEC. 414. If the jury render a verdict which is neither a general nor a special verdict, as defined in sections four hundred and five and four hundred and six, the court may direct them to reconsider it, and it shall not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially, and to leave the judgment to the court.

SEC. 415. If the jury persist in finding an informal verdict from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it shall be entered in the terms in which it is found, and the court shall give judgment of acquittal. But no judgment of conviction can be given unless the jury find expressly against the defendant upon the issue, or judgment be given against him on a special verdict.

SEC. 416. When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party, in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative, the jury shall be sent out for further deliberation.

SEC. 417. When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full on the minutes, and must read it to the jury and inquire of them whether it be their verdict. If any juror disagree, the fact must be entered in the minutes, and the jury again sent out: but if no disagreement be expressed, the verdict is complete, and the jury must be discharged from the case.

SEC. 418. If judgment of acquittal be given on a general verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the verdict is given, except that where the acquittal is for a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention, to the end that a new indictment may be preferred in the same manner and, with like effect, as provided in sections three hundred and seventy-three and three hundred and seventy-four.

SEC. 419. If a general verdict be rendered against the defendant, or a special verdict be given, he must be remanded if in custody, or if on bail, he may be committed to the proper officers of the county, to await the judgment of the court upon the verdict. If so committed, his bail shall be exonerated, or if money be deposited instead of bail, it shall be refunded to the defendant.

VII—PROCEEDINGS AFTER TRIAL AND BEFORE JUDGMENT.

SEC. 420. Bill of exceptions by defendant.

421. Same on behalf of people, when and how settled.

423. What to contain, when to be filed.

425. Written charges to form part of record.

426. New trial, effect of, when may be granted.

428. When application for, to be made.

429. Motion in arrest of judgment, on what founded.

430. Judgment arrested, when motion made.

432. Effect of allowing motion, proceedings after judgment has been arrested.

SEC. 420. On the trial of an indictment, exceptions may be taken by the defendant to a decision of the court as to a matter of law, in any of the following cases: First. In disallowing a challenge to the panel of the jury, or to an individual juror, for implied bias. Second. In admitting or rejecting witnesses or testimony, or in charging the triers of a challenge to a juror for actual bias. Third. In admitting or rejecting witnesses or testimony, or in deciding any question of law, not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

SEC. 421. The exceptions may be taken by the district attorney, or other counsel for the people, to a decision of the court upon a matter of law, in any of the cases specified in the third subdivision of the preceding section.

SEC. 422. A bill containing the exceptions must be settled and signed by the judge, and filed with the clerk within ten days after the trial of the cause, unless further time be granted by said judge or by a judge of the supreme court.

SEC. 423. The bill of exceptions shall contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken; and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material to the questions to be raised.

SEC. 424. The bill of exceptions must be filed with the clerk of the court as soon as it is signed by the judge.

SEC. 425. When any written charge has been presented and given, or refused, the question or questions presented in such charge need not be excepted to nor embodied in a bill of exceptions; but the written charge itself, with the indorsement showing the action of the court, shall form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

SEC. 426. A new trial is a re-examination of the issue, in the same court, before another jury, after a verdict has been given. It places the parties in the same condition as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument.

SEC. 427. The court in which a new trial is had upon the issue of fact has power to grant a new trial, where a verdict has been rendered against the defendant, upon his application, in the following cases only: First. When the trial has been had in his absence, if the indictment be for felony. Second. When the jury has received any evidence out of court, other than that resulting from a view as provided in section three hundred and seventy-six. Third. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and just consideration of the case. Fourth. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. Fifth. When the court has misdirected the jury in a matter of law. Sixth. When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

SEC. 428. The application for a new trial must be made before the judgment is entered in the cause.

SEC. 429. A motion in arrest of judgment is an application

on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment mentioned in section two hundred and eighty-five.

SEC. 430. The court may also, on its own view of any of these defects, arrest the judgment without motion.

SEC. 431. The motion must be made before or at the time when the defendant is called for judgment.

SEC. 432. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

SEC. 433. If, from the evidence on the trial there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court may order him to be recommitted to the officers of the proper county, or admitted to bail anew to answer the new indictment. If the evidence show him guilty of another offence, he shall be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appear sufficient to charge him with any offence, he shall, if in custody, be discharged; or, if admitted to bail, his bail shall be exonerated; or, if money have been deposited instead of bail, it shall be refunded to the defendant, and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

VIII.—JUDGMENT AND EXECUTION.

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438. Defendant out on bail failing to appear, bench warrant.

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463. Effect of finding.

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466. Death penalty, how inflicted.

SEC. 434. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court shall appoint a time for pronouncing judgment.

SEC. 435. The time appointed shall be at least two days after the verdict, if the court intend to remain in session so long; or, if not, as remote a time as can reasonably be allowed. But in no case shall the judgment be rendered in less than six hours after the verdict.

SEC. 436. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for misdemeanor, judgment may be pronounced in his absence.

SEC. 437. When the defendant is convicted of a felony, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it for judgment, and the officer shall do so accordingly.

SEC. 438. If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 439. The clerk, on the application of the district attorney, may, accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

SEC. 440. The bench warrant shall be substantially in the following form:

County of _____.

The people of the United States, of the territory of Idaho, to any sheriff, constable, marshal, or policeman in this territory: A. B., having been on the _____ day of _____, A. D., 18—, duly convicted in the district court of the district of _____, of the crime of (designating it generally), you are therefore

commanded forthwith to arrest the above named A. B., and bring him before that court for judgment, or if the court have adjourned for the term, that you deliver him into the custody of the sheriff of the county of ———.

Given under my hand, with the seal of said court affixed, this the — day of —, A. D., 18—. By order of the court.
[Seal.] E. F., Clerk.

SEC. 441. The bench warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county, it need not be endorsed by a magistrate of that county.

SEC. 442. Whether the bench warrant be served in the county in which it was issued, or in another county, the officer shall arrest the defendant, and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

SEC. 443. When the defendant appears for judgment he shall be informed by the court, or by the clerk under its direction, of the nature of the indictment, and of his plea, and the verdict, if any there are, and shall be asked whether he have any legal cause to show why judgment should not be pronounced against him.

SEC. 444. He may show for cause against the judgment: First. That he is insane; and if, in the opinion of the court, there be reasonable grounds for believing him to be insane, the question of his insanity shall be tried, as provided in sections five hundred and seventy-one, to five hundred and seventy-four, both inclusive. If, upon the trial of that question, the jury find that he is of sound mind, judgment shall be pronounced; but, if they find him insane, he shall be committed to the custody of some proper and suitable person, until he become sane, and when notice is given of that fact, as provided in section five hundred and seventy-eight, he shall be brought before the court for judgment. Second. That he has good cause to offer, either in arrest of judgment, or for a new trial; in which case, the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgement, or for a new trial.

SEC. 445. If no sufficient cause be alleged, or appear to the court why judgment should not be pronounced, it shall thereupon be rendered.

SEC. 446. If the defendant have been convicted of two or more offences before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offences.

SEC. 447. A judgment that the defendant pay a fine, may

also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every two dollars of the fine, or in that proportion.

SEC. 448. A judgment that the defendant shall pay a fine, shall constitute a lien in like manner as a judgment for money rendered in a civil action.

SEC. 449. When judgment upon a conviction is rendered, the clerk shall enter the same in the minutes, stating briefly the offence for which the conviction has been had, and shall, within five days, annex together and file the following papers, which shall constitute the record of the action: First. A copy of the minutes of any challenge which may have been interposed by the defendant to the panel of the grand jury, or to any individual grand juror, and the proceedings thereon. Second. The indictment, and a copy of the minutes of the plea of, or demurrer. Third. A copy of the minutes of any challenge which may have interposed to the panel of the trial jury, or to an individual juror, and the proceedings thereon. Fourth. A copy of the minutes of the trial. Fifth. A copy of the minutes of the judgment. Sixth. The bill of exceptions, if there be one. Seventh. The written charges asked of the court, if there be any.

SEC. 450. When a judgment has been pronounced, a certified copy of the entry thereof in the minutes shall be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof, except when judgment of death is rendered.

SEC. 451. If the judgment be for a fine alone, execution may be issued thereon as on a judgment in a civil action.

SEC. 452. If the judgment be imprisonment, or a fine and imprisonment until it be satisfied, the defendant shall forthwith be committed to the custody of the proper officer and by him detained until the judgment be complied with.

SEC. 453. When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk, under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day on which the judgment shall be executed, which shall not be more than sixty days from the time of the judgment.

SEC. 454. The judge of the court at which a conviction requiring judgment of death shall have been had, shall immediately after the conviction transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

SEC. 455. The governor may thereupon require the opinion of the justices of the supreme court and the attorney-general, or any of them, upon the statement so furnished.

SEC. 456. No judge, court or officer other than the governor, can suspend the execution of a judgment of death, except the sheriff, as provided in the seven succeeding sections, unless an appeal be taken. When an appeal has been taken from a judgment of death, the appellate court, and any judge thereof in vacation, may suspend the execution until the appeal is heard and determined.

SEC. 457. If, after judgment of death, there be good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the district attorney.

SEC. 458. The district attorney shall attend the inquisition, and may produce witnesses before the jury—for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury; and disobedience thereto may be punished in like manner as disobedience to process issued by that court.

SEC. 459. A certificate of the inquisition shall be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

SEC. 460. If it be found by the inquisition that the defendant is sane, the sheriff shall execute the judgment; but if it be found that he is insane, the sheriff shall suspend the execution of the judgment until he receive a warrant from the governor or from the judge of the court by which the judgment was rendered, directing the execution of the judgment.

SEC. 461. If the inquisition find that the defendant is insane, the sheriff shall immediately transmit the same to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

SEC. 462. If there be good reason to suppose that a female, against whom a judgment of death is rendered, is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof shall be given to the district attorney; and the provisions of sections four hundred and fifty-eight and four hundred and fifty-nine shall govern the proceedings upon the inquisition.

SEC. 463. If it be found by the inquisition that such female is not pregnant, the sheriff shall execute the judgment; if it

be found that she is pregnant, the sheriff shall suspend the execution of the judgment, and transmit the inquisition to the governor.

SEC. 464. When the governor is satisfied that such female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

SEC. 465. If, for any reason a judgment of death shall not have been executed, and the same remain in force, the court in which the conviction was had, on the application of the district attorney, shall order the defendant to be brought before it, or if he be at large, a warrant for his apprehension may be issued.

SEC. 466. Upon the defendant being brought before the court, it shall inquire into the facts; and if no legal reason exists against the execution of the judgment, shall make an order to the sheriff of the proper county to execute the judgment at the time specified therein, and the sheriff shall execute the judgment accordingly.

SEC. 467. The punishment of death shall be inflicted by hanging the defendant by the neck until he be dead.

IX.—APPEAL.

SEC. 468. To and from what courts.

469. On questions of law alone.

470. Parties on, designated, what may be reviewed.

472. Time, how taken, when deemed perfect.

477. Effect of appeal, copy of record transmitted to supreme court.

480. Dismissing appeal.

482. Argument of, appellate court.

486. Technical error not to affect.

487. Extent of judgment.

488. New trial, when had, proceedings on reversal of judgment.

490. On affirmance of.

491. Entry of judgment and copy.

492. Papers to remain in appellate court.

493. All further proceedings to be had in court below.

SEC. 468. The party aggrieved in a criminal action, whether the party be the people or the defendant, may appeal as follows: First. To the district court of the county, from a final judgment of a justice's court. Second. To the supreme court, from a final judgment of the district court, in all criminal

cases. Also, from an order of the district court allowing a demurrer granting or refusing a new trial.

SEC. 469. The appeal to the supreme court from the district court can be taken on questions of law alone.

SEC. 470. The party appealing shall be known as the appellant, and the adverse party as the respondent.

SEC. 471. Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed.

SEC. 472. An appeal must be taken within six months after the judgment was rendered.

SEC. 473. An appeal may be taken by the service of a notice in writing on the clerk of the court in which the action was tried, stating that the appellant appeals from the judgment.

SEC. 474. If the appeal be taken by the defendant, a similar notice must be served on the district attorney.

SEC. 475. If it be taken by the people, a similar notice must be served upon the defendant, if he be a resident of the county; if not, on the counsel (if any) who appear for him on the trial, if he be living within the county. If such service, after due diligence, cannot be made, the appellate court, upon proof thereof, shall make an order for the publication of the notice in some newspaper, and for such time as it may deem proper.

SEC. 476. At the expiration of the time appointed for the publication, on filing an affidavit of the publication, the appeal shall be deemed perfected.

SEC. 477. An appeal taken by the people shall in no case stay or affect the operation of a judgment in favor of the defendant.

SEC. 478. No appeal from a judgment of conviction, unless it be one imposing a fine only, shall stay the execution of the judgment; but the defendant, if in custody, shall remain in custody, to abide the judgment on the appeal, unless admitted to bail, as prescribed in section five hundred and one.

SEC. 479. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within ten days thereafter, without charge, transmit to the clerk of the supreme court a copy of the notice of appeal and of the record.

SEC. 480. If the appeal be irregular in any substantial particular, but not otherwise, the appellate court may, on any day in term, on motion of the respondent, upon five days' notice, with copies of the papers upon which the motion is founded, order the same to be dismissed.

SEC. 481. The court may also, upon like motion, dismiss the appeal, if the return be not made as provided in section

four hundred and seventy-nine, unless for good cause it enlarge the time for that purpose.

SEC. 482. All appeals in criminal cases shall be tried and determined at the first term of the appellate court after the record is filed, or as soon thereafter as the same can be heard.

SEC. 483. Judgment of affirmance may be granted without argument, if the appellant fail to appear; but judgment of reversal can only be given upon argument, though the respondent fail to appear.

SEC. 484. Upon the argument of the appeal, if the offence be punishable with death, two counsel shall be heard on each side, if they desire it; in any other case the court may, in its discretion, restrict the argument to one counsel on each side.

SEC. 485. The defendant need not appear in the appellate court.

SEC. 486. After hearing the appeal, the court shall give judgment without regard to technical error or defect, which do not affect the substantial rights of the parties.

SEC. 487. The appellate court may reverse, affirm or modify the judgment appealed from, and may, if necessary or proper, order a new trial.

SEC. 488. When a new trial is ordered, it must be directed to be had in the court of the district from which the appeal was taken.

SEC. 489. If a judgment against the defendant be reversed without ordering a new trial, the appellate court shall direct, if he be in custody, that he be discharged therefrom, or if he be admitted to bail, that his bail be exonerated, or if money be deposited instead of bail, that it be refunded to the defendant.

SEC. 490. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution, as the appellate court shall direct.

SEC. 491. When the judgment of the appellate court is given, it shall be entered in the minutes, and a certified copy of the entry shall be forthwith remitted to the clerk of the court from which the appeal was taken.

SEC. 492. The papers returned to the appellate court shall there remain of record, and shall not be remitted to the court below.

SEC. 493. After the certificate of judgment has been remitted, as provided in section four hundred and ninety-one, the appellate court shall have no further jurisdiction of the appeal, or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect, shall be made by the court to which the certificate is remitted.

CRIMINAL PRACTICE ACT.

X.—BAIL.

- Sec. 494.** Bail defined, taking, admission to.
497. When not admitted to, indiscretion, notice necessary.
499. After conviction, when allowed, before conviction.
501. On appeal, held to answer, who may admit to.
503. How put in, recognizance, form of.
504. Qualification of, justification of.
507. On indictment before conviction.
508. When delivered into custody to be held by sheriff.
510. Bail, how put in, recognizance, form of.
511. Qualifications and justifications of.
512. Bail on appeal, order for, notice of application for.
514. Qualifications and recognizance.
515. Deposit in lieu of bail, in exoneration of.
517. How deposit applied.
518. How bail may surrender defendant and be exonerated.
520. Bail may arrest defendant, surrender after deposit.
522. When recognizance or deposit forfeited.
523. Discharge of forfeiture, action on recognizance.
525. Payment of deposit to county treasurer.
526. When defendant may be recommitted after bail.
527. Order for recommitment, what to contain.
528. Arrest on such order, amount of bail to be specified.
531. Who may take bail in such cases.
532. Form of recognizance on complaint, qualifications of bail.

Sec. 494. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon giving bail.

Sec. 495. The taking of bail consists in the acceptance by a competent court or magistrate, of the recognizance of sufficient bail for the appearance of the defendant, according to the terms of the recognizance, or that the bail will pay to the people of the United States of the territory of Idaho, a specified sum.

Sec. 496. A person charged with an offence may be admitted to bail before conviction, as follows: First. As a matter of discretion in all cases where the punishment is death. Second. As a matter of right in all other cases.

Sec. 497. No person shall be admitted to bail where he is charged with an offence punishable with death, when the proof is evident or the presumption great.

Sec. 498. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem

reasonable to be given to the district attorney of the county where the examination is had.

SEC. 499. After conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail: First. As a matter of right, where the appeal is from a judgment imposing a fine only. Second. As a matter of discretion in all other cases.

SEC. 500. Before conviction a defendant may be admitted to bail: First. For his appearance before a magistrate, on the examination of the charge, before being held to answer. Second. To appear at the court to which the magistrate is required, by section one hundred and seventy-two, to return the depositions and statement upon the defendant being held to answer after the examination. Third. After indictment, either before the bench warrant is issued for his arrest, or upon an order of the court committing or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be sent or removed for trial.

SEC. 501. After conviction and upon an appeal, the defendant may be admitted to bail as follows: First. If the appeal be from a judgment imposing a fine only, on the recognizance of bail that he will pay the same, or such part of it as the appellate court may direct, if the judgment be affirmed or modified, or the appeal dismissed. Second. If judgment of imprisonment have been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

SEC. 502. When the defendant has been held to answer, as provided in section one hundred and sixty, the admission of bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of *habeas corpus*.

SEC. 503. Bail is put in by a written recognizance, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form: "An order having been made on the _____ day of _____, A. D., 18—, by A. B., a justice of the peace of _____ county, (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offence), upon which he has been duly admitted to bail in the sum of _____ dollars; we, E. F. and G. H., (stating their place of residence), hereby undertake that the above named C. D. shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall, at all times render him-

self amenable to the orders and process of the court, and, if convicted, shall appear for judgment and render himself in execution thereof, or, if he fail to perform either of these conditions, that we will pay to the people of the United States of the territory of Idaho, the sum of ——— dollars, (inserting the sum in which the defendant is admitted to bail)."

SEC. 504. The qualifications of bail are as follows: First. Each of them must be a resident within the territory; but the court or magistrate may refuse to accept any person as a bail who is not a resident of the county where the bail is offered. Second. They must each be worth the amount specified in the recognizance, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two bail to justify severally in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

SEC. 505. The bail shall, in all cases, justify by affidavit, taken before the court or magistrate, as the case may be. The affidavit must state that they each possess the qualifications provided in section five hundred and four.

SEC. 506. The court or magistrate may thereupon further examine the bail, upon oath, concerning their sufficiency, in such manner as the court or magistrate may deem proper.

SEC. 507. When the offence charged in the indictment is not capital, the officer serving the bench warrant shall, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail, as prescribed in sections two hundred and sixty-one and two hundred and sixty-four.

SEC. 508. If the offence charged in the indictment be capital, the officer arresting the defendant shall deliver him into custody, according to the command of the bench warrant, as prescribed in section two hundred and fifty-nine.

SEC. 509. When the defendant is so delivered into custody he shall be held by the sheriff, unless admitted to bail on examination, upon a writ of *habeas corpus*.

SEC. 510. The bail must be put in by a written recognizance executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found, on the — day of —, A. D., eighteen hundred and —, in the court of the district of — (as the case may be), charging A. B. with the crime of designating it generally), and he having been duly admitted to bail in the sum of — dollars, we, C. D. and

E. F., (stating their place of residence), hereby undertake that the above named A. B. shall appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and processes of the court, and if convicted, shall appear for judgment, and render himself in execution thereof; or, if he fail to perform either of these conditions, that we will pay to the people of the United States, of the territory of Idaho, the sum of _____ dollars (inserting the sum in which the defendant is held to bail).

SEC. 511. The provisions contained in sections five hundred and four and five hundred and six, both inclusive, in relation to bail, shall apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail and incident thereto.

SEC. 512. In the cases in which the defendant may be admitted to bail, upon an appeal, as provided in section four hundred and ninety-nine, the order admitting him to bail may be made by any magistrate having the power to issue a writ of *habeas corpus*.

SEC. 513. When the admission to bail is a matter of discretion, the court, or officer by whom it may be ordered, shall require such notice of the application therefor as he may deem reasonable, to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

SEC. 514. The bail must possess the qualifications, and must be put in in all respects as above provided, except that the condition of recognizance shall be to the effect that the defendant will in all respects abide the orders and judgment of the appellate court upon the appeal.

SEC. 515. The defendant, at any time after an order admitting him to bail, may deposit with the clerk of the court in which he is held to answer the sum mentioned in the order; and upon delivering to the officer in whose custody he is, a certificate of the deposit, he shall be discharged from custody. This may be done instead of giving bail.

SEC. 516. If the defendant have given bail, he may, at any time before the forfeiture of the recognizance, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made, the bail shall be exonerated.

SEC. 517. When money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine, the clerk shall, under the direction of the court, apply the money in satisfaction thereof; and, after satisfying the fine and costs, shall refund the surplus, if any, to the defendant.

SEC. 518. At any time before the forfeiture of the recog-

nizance, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer, to whose custody he was committed, at the time of giving bail, in the following manner:

SEC. 519. A certified copy of the recognizance of bail shall be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and shall, by a certificate in writing, acknowledge the surrender. Second. Upon a recognizance and a certificate of the officer, the court in which the action is pending may, upon notice of five days to the district attorney of the district, with a copy of the recognizance and certificate, order that the bail be exonerated; and on filing the order and the papers used on the application, they shall be exonerated accordingly.

SEC. 520. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the territory, may themselves arrest him, or by a written authority, endorsed on a certified copy of the recognizance, may empower any person of suitable age and discretion to do so.

SEC. 521. If money have been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner provided in the last two sections, the court shall order a return of the deposit to the defendant, upon producing the certificate to the officer, showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

SEC. 522. If, without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment the court shall direct the fact to be entered upon its minutes, and the recognizance, or the money deposited instead of bail, as the case may be, shall thereupon be declared forfeited.

SEC. 523. If, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the recognizance or the deposit to be discharged, upon such terms as may be just.

SEC. 524. If the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed by action only against the bail upon their recognizance.

SEC. 525. If, by reason of the neglect of the defendant to appear, as provided in section five hundred and twenty-two,

money deposited instead of bail is forfeited, and the forfeiture be not discharged or remitted, as provided in section five hundred and twenty-three, the clerk with whom it is deposited shall, immediately after the final adjournment of the court, pay over the money deposited, to the county treasurer.

SEC. 526. The court to which the committing magistrate shall return the dispositions and statement, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered on its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases: First. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in section five hundred and twenty-two. Second. When it satisfactorily appears to the court that his bail, or either of them, are dead, or insufficient, or have removed from the territory. Third. Upon an indictment being found in the cases provided in section two hundred and sixty-five.

SEC. 527. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal or policeman within this territory, and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.

SEC. 528. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county, the order need not be endorsed by a magistrate of that county.

SEC. 529. If the order recite, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

SEC. 530. If the order be made for any other cause, and the offence be bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum affixed, which shall be specified in the order.

SEC. 531. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail upon the holding of the defendant to answer before indictment, as prescribed in

section five hundred and two, or by any other magistrate to be designated by the court.

SEC. 532. When bail is taken upon the recommitment of the defendant, the recognizance shall be in substantially the following form: "An order having been made on the —— day of ——, A. D. 18——, by the court (naming it), that A. B. be admitted to bail in the sum of —— dollars, in an action pending in that court against him in behalf of the people of the United States, of the Territory of Idaho, upon an (information, presentment, indictment, or appeal, as the case may be), we, C. D. and E. F., of (stating their place of residence), hereby undertake that the above named A. B. shall appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and shall at all times render himself amenable to its orders and processes, and appear for judgment, and surrender himself in execution thereof, or if he fail to perform either of these conditions, that we will pay to the people of the United States, of the Territory of Idaho, the sum of —— dollars (inserting the sum in which the defendant is admitted to bail)."

SEC. 533. The bail must possess the qualifications, and must be put in in all respects in the manner heretofore prescribed.

V.—MISCELLANEOUS PROCEEDINGS.

I.—COMPELLING WITNESSES TO ATTEND.

SEC. 534. Subpœna, who may issue, form of, *duces tecum*.

541. How served, payment of witnesses.

545. Attendance of witnesses out of county.

546. Disobedience to subpœna, etc.

547. Recognizance, how forfeited.

548. Disobedience of subpœna issued by defendant.

SEC. 534. The process by which the attendance of a witness before a court or magistrate is required, is a subpœna.

SEC. 535. A magistrate before whom an information is laid may issue subpœnas, subscribed by him, for witnesses within the territory, either on behalf of the people or of the defendant.

SEC. 536. The district attorney may issue subpœnas, subscribed by him, for witnesses within the territory, in support

of the prosecution, or for such other witnesses as the grand jury may direct to appear before the grand jury, upon any investigation pending before them.

SEC. 537. The district attorney may, in like manner, issue subpoenas, subscribed by him, for witnesses within the territory, in support of an indictment, to appear before the court at which it is to be tried.

SEC. 538. The clerk of the court at which an indictment is to be tried, shall, at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses within the territory, as may be required by the defendant.

SEC. 539. A subpoena authorized by the last four sections, shall be substantially in the following form: "The people of the United States, of the Territory of Idaho, to A. B.: You are commanded to appear before C. D., a justice of the peace of _____ township, in _____ county (or, the court of _____, as the case may be), at (naming the place), on (state the day and hour), as a witness in a criminal action, presented by the people of the United States, of the Territory of Idaho, against E. F. Given under my hand, this _____ day of _____, A. D. 18—. G. H., justice of the peace (or J. B., district attorney, or 'By order of the court, L. M., clerk,' as the case may be)."

SEC. 540. If books, papers, or documents be required, a direction to the following effect shall be contained in the subpoena: "And you are required also to bring with you the following (describing intelligibly the books, papers, or documents required)."

SEC. 541. A peace officer must serve within his county any subpoena delivered to him for service, either on the part of the people, or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service, without delay.

SEC. 542. The service of a subpoena shall be by showing the original to the witness personally, and informing him of the contents.

SEC. 543. When a person shall attend before a magistrate, grand jury, or court, as a witness on behalf of the people, upon a subpoena, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial by an order upon its minutes, or in any other case, the district or probate judge, by an order subscribed by him, may direct the treasurer of the county to pay the witness

a reasonable sum, to be specified in the order, for his expenses.

SEC. 544. Upon the production of the order, or certified copy thereof, the county treasurer shall pay the witness the sum specified therein out of the county treasury.

SEC. 545. No person shall be obliged to attend as a witness before any court or judge out of the district where the witness resides, or is served with the subpoena, unless a judge of a court in which the offence is triable, or a justice of the supreme court, or a probate judge, upon an affidavit of the district attorney or prosecutor, or of the defendant or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpoena an order for the attendance of the witness.

SEC. 546. Disobedience to a subpoena, or a refusal to be sworn or to answer as a witness, may be punished by the court or magistrate as a contempt.

SEC. 547. Where a witness has entered into a recognizance to appear, as provided in section one hundred and sixty-six, upon his failure so to do, his recognizance shall be forfeited, in the same manner as recognizances of bail.

SEC. 548. A witness disobeying a subpoena, issued on the part of a defendant, shall also forfeit to the defendant the sum of one hundred dollars—which may be recovered in a civil action, unless good cause can be shown for his non-attendance.

II.—TESTIMONY TAKEN BY COMMISSION.

SEC. 549. Defendant's witnesses examined before or after indictment.

550. When such examination had, commission denied.

552. Who may be commissioner, application what to show.

554. When and to whom made, order for when to be granted.

556. Stay of proceedings, notice and interrogatories served on district attorney.

558. Cross-interrogatories, what may be inserted.

560. Allowance of interrogatories.

561. Direction to execute commission, how executed.

563. What to be annexed, return of commission.

566. Filing commission and return, when by mail.

568. Commission and return open for inspection.

569. Depositions evidence for either party.

SEC. 549. When a defendant has been held to answer a charge for a public offence, he may, either before or after in-

dictment, have witnesses examined on his behalf, as prescribed in this act, and not otherwise.

SEC. 550. When a material witness for the defendant is about to leave the territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally on a commission.

SEC. 551. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath, on interrogations annexed thereto, to take and certify the deposition of the witness, and return it according to the directions given in the commission.

SEC. 552. The commissioner shall be either a district judge, probate judge, county clerk or notary public of the district to which the commission is issued.

SEC. 553. The application must be made upon affidavit, showing—First. The nature of the offence charged. Second. The state of the proceedings in the action. Third. The name of the witness, and that his testimony is material to the defense of the action. Fourth. That the witness is about to leave the territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

SEC. 554. The application may be made to the court during the term, or to the judge in vacation, and must be upon three days' notice to the district attorney.

SEC. 555. If the court or judge to whom the application is made, be satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

SEC. 556. If the application for a commission be granted, the court or judge may insert in the order therefor a direction that the trial of the indictment be stayed for a specified time reasonably sufficient for the execution and return of the commission.

SEC. 557. When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or judge.

SEC. 558. The district attorney may, in like manner, serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with like notice.

SEC. 559. In the interrogatories, either party may insert any question pertinent to the issue.

SEC. 560. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge shall modify the questions so as to conform them to the rules of evidence, and shall endorse upon them his allowance, and annex them to the commission.

SEC. 561. Unless the parties otherwise consent by an endorsement on the commission, the court or judge shall endorse thereon a direction as to the manner in which it shall be returned, and may, in his discretion, direct that it be returned by mail, or otherwise, addressed to the clerk of the court in which the action is pending.

SEC. 562. The commissioner, unless otherwise specially directed, may execute the commission as follows: First. He shall publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth. Second. He shall cause the examination of the witness to be reduced to writing. Third. He shall write the answers of the witness as near as possible in the language he gives them, and shall read to them each answer as it is taken down, and correct or add to it until it is made conformable to what he declares is the truth. Fourth. If a witness decline answering a question, that fact, with the reason for which he declines answering it, as he gives it, must be stated. Fifth. If any papers or documents are produced before him and proved by the witness, they shall be annexed to his deposition and be subscribed by the witness, and certified by the commissioner. Sixth. The commissioner shall subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness to the commission, and must close up under seal, and address the same as directed on the commission. Seventh. If there be a direction on the commission to return it by mail, the commissioner shall immediately deposit it in the nearest post office; if any other direction be made by the written consent of the parties, or by the court or judge on the commission as to its return, he must comply with the direction.

SEC. 563. A copy of the last section must be annexed to the commission.

SEC. 564. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received

it from the hand of the commissioner, and that it has not been opened or altered since he received it.

SEC. 565. If the agent be dead, or from sickness or other casualty unable personally to deliver the commission and return as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes that it has not been opened or altered since it came from the hand of the commissioner.

SEC. 566. The clerk or judge receiving and opening the commission and return, must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending.

SEC. 567. If the commission and return be transmitted by mail, the clerk to whom it is addressed must receive it from the post office, and open and file it in his office, where it shall remain, unless the court otherwise direct.

SEC. 568. The commission and return shall at all times be open to the inspection of the parties, who shall be furnished by the clerk with copies of the same, or of such part thereof as they may require, on payment of his fees.

SEC. 569. The depositions taken under the commission may be read in evidence by the defendant on the trial, upon it being shown that the witness is unable to attend from any cause whatever, and the same objections may be taken to any questions in the interrogatories, or to any answer in the deposition, as if the witness had been examined orally in court.

III.—INQUIRING INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

SEC. 570. Insanity excuses crime.

571. Inquiry into defendant's sanity.

572. Trial or judgment suspended, insanity, how tried.

574. Charge to jury, defendant found sane, proceedings.

576. Found insane, proceedings, bail, expnerating.

578. Returning to sanity, proceedings.

579. Expense of keeping defendant, to whom chargeable.

SEC. 570. An act done by a person in a state of insanity cannot be punished as a public offence, nor can a person be tried, adjudged to punishment, or punished, for a public offence while he is insane.

SEC. 571. When an indictment is called for trial, or upon conviction, the defendant is brought up for judgment, if a doubt shall arise as to the sanity of the defendant, the court shall order the question to be submitted to the regular jury, or may order a jury to be summoned as prescribed in section four hundred and fifty-seven, to inquire into the fact.

SEC. 572. The trial of the indictment, or the pronouncing of the judgment, as the case may be, shall be suspended until the question of insanity shall be determined by the verdict of the jury.

SEC. 573. The trial of the question of insanity shall proceed in the following order: First. The counsel for the defendant shall open the case, and offer evidence in support of the allegation of insanity. Second. The counsel for the people shall open their case, and offer evidence in support thereof. Third. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause. Fourth. When the evidence is concluded, unless the case is submitted to the jury, on either or both sides, without argument, the counsel for the people must commence, and the defendant, or his counsel, may conclude the argument to the jury. Fifth. If the indictment be for an offence punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases, the argument may be restricted to one counsel on each side. Sixth. The court shall then charge the jury, if requested by either party.

SEC. 574. The provisions of section three hundred and eighty-five, in respect to the charge of the court to the jury, upon the trial of an indictment, shall apply to the trial of the question of insanity.

SEC. 575. If the jury find that the defendant is sane, the trial of the indictment shall proceed, or judgment may be pronounced, as the case may be.

SEC. 576. If the jury find that the defendant is insane, the trial or judgment shall be suspended until he become sane; and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the sheriff to the custody of some proper person, and that, upon his becoming sane, he be redelivered by such person to the sheriff.

SEC. 577. The commitment of the defendant, as mentioned in the last section, shall exonerate any bail he may have given, or shall entitle any person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

SEC. 578. If the defendant be received by the person so appointed, he must be detained by him until he becomes sane. When he becomes sane, such person shall give notice to the sheriff and district attorney of the county of that fact. The sheriff shall thereupon, without delay, take the defendant from the custody of such person, and place him in proper custody until he be brought to trial or judgment, as the case may be, or be otherwise legally discharged.

SEC. 579. The expense of placing the defendant in the custody of such proper person, of keeping him and bringing him back, shall, in the first instance, be chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from any relative, town, city or county bound to provide for and maintain him elsewhere.

IV.—DISMISSAL OF THE ACTION, BEFORE OR AFTER THE INDICTMENT, FOR WANT OF PROSECUTION OR OTHERWISE.

SEC. 580. Prosecution, when dismissed, indictment, when.

582. Continuance of action, and discharge of defendant.

583. Dismissal of action, reasons for to be set forth.

585. Discontinuation by district attorney, dismissal bar to another proceeding.

SEC. 580. When a person has been held to answer for a public offence, if an indictment be found against him at the next term of the court at which he is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown.

SEC. 581. If a defendant, indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court at which the indictment is triable, after the same is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

SEC. 582. If the defendant be not indicted or tried, as provided in the last two sections, and sufficient reason therefor be

shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own recognizance, or on the recognizance of bail for his appearance to answer the charge at the time to which the action is continued.

SEC. 583. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom; or if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

SEC. 584. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order any action after indictment to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes.

SEC. 585. Neither the attorney general nor the district attorney, shall hereafter discontinue or abandon a prosecution for a public offence, except provided in the last section.

SEC. 586. An order for the dismissal of the action, as provided in this act, shall be a bar to another prosecution for the same offence, if it be a misdemeanor; but it shall not be a bar if the offence charged be a felony.

V.—ENTITLING AFFIDAVITS.

SEC. 587. It shall not be necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it shall be as valid and effectual for every purpose as if it were duly entitled, if it intelligibly allude to the proceeding, indictment or appeal in which it is made.

VI.—ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

SEC. 588. Neither a departure from the form and mode prescribed by this act in respect to any pleadings or proceedings, nor an error or mistake therein, shall render the same invalid, unless it have actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

VII.—DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SEC. 589. When property alleged to have been stolen or embezzled, shall come into the custody of a peace officer, he shall hold the same subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

SEC. 590. On satisfactory proof of the title of the owner

of the property, the magistrate to whom the information is laid, or shall examine the charges against the person accused of stealing or embezzling the property, may order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

SEC. 591. If the property stolen or embezzled come into the custody of the magistrate it shall be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

SEC. 592. If the property stolen or embezzled have not been delivered to the owner, the court before which a conviction is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner.

SEC. 593. If the property stolen or embezzled be not claimed by the owner, before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody shall, on payment of the necessary expenses incurred for its preservation, deliver it to the county treasurer, by whom it shall be sold and the proceeds paid into the county treasury.

SEC. 594. When money or other property is taken from a defendant arrested upon a charge of a public offence, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he shall deliver to the defendant, and the other of which he shall forthwith file with the clerk of the court, to which the deposition and statement must be sent, as provided by section one hundred and seventy-two.

VI.—PROCEEDINGS IN JUSTICES' COURTS.

SEC. 595. How commenced, examination of complaint.

597. Warrant of arrest, form of, pleadings.

599. Defendant to be present on trial.

600. Docket, how kept, jury trial, challenge to jurors.

603. Oath to jurors, jury to hear proof in public.

605. Court to decide questions of law, deliberation of jury.

607. Verdict to be general, against part of defendants.

610. Jury not to be discharged, second trial when had.

Sec. 612. Judgment to pay fine may direct imprisonment.

614. Acquittal, malicious prosecution.

615. When judgment against prosecutor, entry of verdict.

617. Rendition of Judgment.

618. Motion for new trial when granted.

620. Arrest of Judgment, on what founded, pronouncing judgment.

622. Discharge of defendant, judgment of Imprisonment.

624. Imprisonment until payment of fine, application of.

628. Proceedings when defendant fails to appear for judgment.

SEC. 595. All proceedings and actions before a justice's court, for a public offence, of which said court have jurisdiction, shall be commenced by complaint setting forth the offence charged, with such particulars of time, place, person and property, as to enable the defendant to understand distinctly the character of the offence complained of, and to answer the complaint.

SEC. 596. When the complaint is laid before the justice, of the commission of a public offence, of which the courts held by them have jurisdiction, he must examine on oath the complainant or prosecutor, and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the party making them.

SEC. 597. If the justice be satisfied therefrom that the offence complained of has been committed, he shall issue a warrant of arrest, which shall be substantially in the following form:

County of ———.

The people of the United States, of the territory of Idaho, to any sheriff, constable, marshal, or policeman in this territory: Complaint upon oath having this day been made before me (justice of the peace, mayor, police judge, or recorder as the case may be), by C. D., that the offence of (designating it generally), has been committed, and accusing E. F. thereof, you are therefore commanded forthwith to arrest the above named E. F., and bring him before me forthwith at (naming the place).

Witness my hand and seal, at ———, this ——— day of ———,
A. D. 18—. A. B.

SEC. 598. On being arrested, the defendant may plead to the complaint, or he may answer or deny the same. Such plea, answer or denial may be oral or in writing, and immediately thereafter the case shall be tried, unless, for good cause shown, an adjournment be granted. If an adjournment be granted the defendant may be held to bail.

SEC. 599. The defendant must, in all cases, be personally present before the trial shall proceed.

SEC. 600. A docket shall be kept by the justice, or by the clerk of the court, if there be one, in which he shall enter each action, and the minutes of the proceedings of the court therein.

SEC. 601. The defendant shall be entitled, if demanded by him, to a jury trial. The formation of juries is provided for by special statute.

SEC. 602. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as may be taken on the trial of an indictment for a misdemeanor; but the challenge shall in all cases be tried by the court.

SEC. 603. The court shall administer to the jury the following oath or affirmation: "You do swear, (or affirm, as the case may be) that you will well and truly try this issue between the people of the United States, of the territory of Idaho, and A. B., the defendant, and a true verdict give according to the evidence."

SEC. 604. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

SEC. 605. The court shall decide all questions of law which may arise in the course of the trial, but shall give no charge with respect to matters of fact.

SEC. 606. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep the jury together, in some private and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed."

SEC. 607. The verdict of the jury shall, in all cases be general.

SEC. 608. When the jury have agreed upon their verdict, they shall deliver it publicly to the court, who shall cause the same to be entered on the minutes.

SEC. 609. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

SEC. 610. The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and ren-

dered their verdict, unless for good cause the court sooner discharge them.

SEC. 611. If the jury be discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial; and so on until a verdict be rendered.

SEC. 612. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court shall render judgment thereon of fine or imprisonment, or both, as the case may require.

SEC. 613. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be paid or satisfied.

SEC. 614. When the defendant is acquitted, either by the court or by the jury, he shall be immediately discharged; and if the court certify in the minutes that the prosecution was malicious, or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same to the county within thirty days after the trial.

SEC. 615. If the prosecutor do not pay the costs, or give security therefor, as provided in the last section, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment in a civil action.

SEC. 616. When a verdict is rendered, it shall be immediately entered upon the minutes.

SEC. 617. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court shall appoint a time for rendering judgment, which shall not be more than two days, nor less than six hours after the verdict is rendered, and shall hold the defendant to bail to appear for judgment, and in default of bail, he shall be committed.

SEC. 618. At any time before the judgment is entered, the defendant may move for a new trial, or in arrest of judgment.

SEC. 619. A new trial can be granted only in the following cases: First. If the trial has been had in his absence. Second. When the jury has received any evidence out of court. Third. When the jury have separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case. Fourth. When their verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors. Fifth.

When there has been error in the decision of the court, given on any question of law arising during the course of the trial. Sixth. When the verdict is contrary to law and evidence; but not more than one new trial shall be granted for this cause alone.

SEC. 620. The motion in arrest of judgment may be founded on any substantial defect in the complaint; and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

SEC. 621. If the judgment be not arrested, or a new trial granted, judgment shall be pronounced at the time appointed, and entered in the minutes of the court.

SEC. 622. If judgment of acquittal be given, or judgment imposing a fine only, and the defendant be not detained for any other legal cause, he must be discharged as soon as the judgment is given.

SEC. 623. When a judgment of imprisonment is entered, a certified copy thereof shall be delivered to the sheriff, marshal, or other officer, which shall be a sufficient warrant for the execution of the same.

SEC. 624. When a judgment is entered imposing a fine, and ordering the defendant to be imprisoned until the fine be paid, he shall be held in custody during the time specified in the judgment, unless the fine be sooner paid.

SEC. 625. Upon the payment of the fine, the officer shall immediately discharge the defendant, if he be not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county or city treasurer, according as the offence is prosecuted in a justice's court.

SEC. 626. If a fine be imposed and paid before commitment, it shall be applied as prescribed in the preceding section.

SEC. 627. If a defendant be discharged on bail, or has deposited money instead thereof, and fails to appear according to his recognizance, the same shall be forfeited, or the money appropriated in like manner as in the district court.

SEC. 628. In case of a failure to appear for judgment, the court shall issue a warrant for the arrest of the defendant, and shall enter judgment whenever the defendant appears, or is brought before it.

VII.—SPECIAL PROCEEDINGS.

I.—SEARCH WARRANT.

Sec. 629. Defense, when not to be issued, depositions.

634. Search warrant, when and how issued, form of, how served.

640. When to be executed and returned.

741. Property taken to be receipted for, how disposed of.

643. Inventory of, testimony when taken and how.

647. When property to be restored, papers to be returned to next term of court

649. Maliciously obtaining warrant.

650. Officer exceeding authority, defendant may be searched.

Sec. 629. A search warrant is an order in writing, in the name of the people of the United States, of the territory of Idaho, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, or implements used, or evidence of crime, and bring it before the magistrate.

Sec. 630. It may be issued whenever property has been stolen or embezzled, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of any person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Sec. 631. No search warrant shall be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and place to be searched.

Sec. 632. The magistrate must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the party making them.

Sec. 633. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Sec. 634. If the magistrate be satisfied of the existence of the grounds of the application, or that there is probable cause to believe in their existence, he shall issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

Sec. 635. The warrant shall be in substantially the following form:

County of _____.

The people of the United States, of the Territory of Idaho, to any sheriff, constable, marshal or policeman in the county of _____: Proof by affidavit having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to section six hundred and thirty-one; or, if the affidavit be not positive, that there is probable cause for believing that—stating the grounds of the application in the same manner); you are thereupon commanded, in the daytime (or at any time of the day or night, as the case may be, according to section six hundred and forty-one), to make immediate search on the person of C. D., (or in the house situated _____, describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity); and if you find the same, or any part thereof, to bring it forthwith before me at (stating the place).

Given under my hand, and dated this _____ day of _____ A. D. 18—. E. F., justice of the peace (or as the case may be).

SEC. 636. A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer, on his requiring it—he being present and acting in its execution.

SEC. 637. The officer may break open an outer or inner door or window of a house, or any part of the house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

SEC. 638. He may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid him in the execution of his warrant, is detained therein, or when necessary for his own liberation.

SEC. 639. The magistrate must insert a direction in the warrant that it be served in the daytime, unless the affidavits be positive that the property is on the person or in the place to be searched—in which case he may insert a direction that it may be served at any time of the day or night.

SEC. 640. A search warrant must be executed and returned to the magistrate who issued it within five days after its date, and if in any other county, within thirty days; after the expiration of these times, respectively, the warrant shall, unless executed, be void.

SEC. 641. When the officer shall have taken any property under the warrant, he must give a receipt for the property taken (specifying it in detail), to the person from whom it was taken by him, or in whose possession it was found; or, in the

absence of any person, he shall leave it in the place where he found the property.

SEC. 642. When the property is delivered to the magistrate, he shall, if it was stolen or embezzled, dispose of it as provided in sections five hundred and ninety to five hundred and ninety-four, both inclusive.

SEC. 643. The officer shall forthwith return the warrant to the magistrate, and at the same time deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

SEC. 644. The magistrate shall thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

SEC. 645. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto.

SEC. 646. The testimony given by each witness must be reduced to writing, and certified by the magistrate.

SEC. 647. If it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

SEC. 648. The magistrate shall annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the court, having power to inquire into the offence, in respect to which the search warrant was issued, at or before its opening on the first day.

SEC. 649. Whoever shall maliciously and without probable cause procure a search warrant to be issued and executed, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding five thousand dollars, or imprisoned not exceeding six months.

SEC. 650. A peace officer who, in executing a search warrant, shall wilfully exceed his authority, or exercise it with unnecessary severity, shall be deemed guilty of a misdemeanor, and punished as in the next preceding section is provided.

SEC. 651. When a person charged with a felony is supposed by the magistrate before whom he is brought, to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offence, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or the order of the court in which the defendant may be tried.

II.—PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

SEC. 652. Fugitives to be delivered up, how apprehended.

654. Proceedings for arrest and commitment.

656. Bail, district attorney to be notified.

658. Notice to authority of state or territory having jurisdiction.

659. In certain events to be discharged.

660. Return of proceedings to next district court.

SEC. 652. A person charged in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice, and be found in this territory, shall, on demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this territory, to be removed to the state or territory having jurisdiction of the crime.

SEC. 653. A magistrate may issue a warrant for the apprehension of a person so charged who shall flee from justice, and be found in this territory.

SEC. 654. The proceedings for the arrest and commitment of the person charged, shall be in all respects similar to those provided in this act for the arrest and commitment of a person charged with a public offence committed within this territory, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the state or territory in which he is charged to have committed the offence, may be received as evidence before the magistrate.

SEC. 655. If, from the examination, it appear that the person charged has committed treason, felony, or other crime charged, the magistrate, by warrant reciting the accusation, shall commit him to the proper custody within his county, for a time to be specified in the warrant, which the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this territory, on the requisition of the executive authority of the state or territory

in which he committed the offence, unless he give bail as provided in the next section, or until he be legally discharged.

SEC. 656. The magistrate may admit the person arrested to bail by recognizance, with sufficient sureties, and in such sum as he may deem proper, for his appearance before him at a time specified in the recognizance, and for his surrender to be arrested upon the warrant of the governor of this territory.

SEC. 657. Immediately upon the arrest of the person charged, the magistrate shall give notice to the district attorney of the district, of the name of the person and the cause of the arrest.

SEC. 658. The district attorney shall immediately thereafter give notice to the executive authority of the state or territory, or to the prosecuting attorney, or presiding judge of the criminal court of the city or county, within the state or territory having jurisdiction of the offence, to the end that a demand may be made for the arrest and surrender of the person charged.

SEC. 659. The person arrested shall be discharged from custody or bail, unless before the expiration of the time designated in the warrant or recognizance, he be arrested under the warrant of the governor of this territory.

SEC. 660. The magistrate shall make return of his proceedings to the next district court of the county, which shall thereupon inquire into the cause of the arrest and detention of the person charged, and if he be in custody, or the time of his arrest have not elapsed, the court may discharge him from detention, or may order his recognizance of bail to be canceled, or may continue his detention for a longer time, or may readmit him to bail, to appear and surrender himself, within a time to be specified in the recognizance.

III.—COMPROMISING OFFENCES.

SEC. 661. When a defendant is held to answer on a charge of a misdemeanor, for which the person injured by the act constituting the offence has a remedy by a civil action, the offence may be compromised as provided in the next section, except when it was committed—First. By or upon an officer of justice, while in the execution of the duties of his office. Second. Riotously. Third. With an intent to commit a felony.

SEC. 662. If the party injured appear before the court to which the depositions are required to be returned at any time before trial, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion,

on payment of the costs incurred, order all the proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but, in such case, the reason for the order must be set forth therein, and entered on the minutes.

SEC. 663. The order authorized by the last section shall be a bar to another prosecution for the same offence.

SEC. 664. No public offence shall be compromised, nor shall any proceeding for the prosecution or punishment thereof, upon a compromise be stayed, except as provided in this act.

IV.—FINES AND FORFEITURES.

SEC. 665. All fines and forfeitures collected in any court of this territory, shall be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred, and after such costs are paid, the residue shall be paid to the county treasurer of the county in which the court is held.

SEC. 666. If any clerk, justice of the peace, sheriff, constable, or other officer, who may receive any fine or forfeiture, shall refuse or neglect to pay over the same according to law, and within thirty days after the receipt thereof, he shall be liable upon his official bond for the amount thereof, with fifty per cent. damages and interest—to be recovered in like manner as for failing to pay over money received on execution—and shall be deemed guilty of a misdemeanor; and, on conviction, may be fined in any sum not exceeding five hundred dollars, or by imprisonment not exceeding three months.

VIII.—PROMISCUOUS PROVISIONS.

SEC. 667. The term "oath," when used in this act, shall be deemed to include an affirmation.

SEC. 668. When a signature of a person is required by this act, the mark of the person, if he cannot write, shall be deemed sufficient—the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name as a witness.

SEC. 669. When it is necessary for any purpose to have a person who is in prison in any part of the territory brought

before a court of criminal jurisdiction, an order for that purpose may be made by the court, and the order shall be executed by the sheriff of the county where it is made.

SEC. 670. Process issued by a court or magistrate shall be executed according to its terms.

SEC. 671. The term "magistrate," when used in this act, signifies any one of the officers mentioned in section one hundred and two.

SEC. 672. The term "peace officer," when used in this act, signifies any one of the officers mentioned in section one hundred and eight.

SEC. 673. The fees allowed to justices of the peace, and other officers having the jurisdiction and authority of justices of the peace, clerks, peace officers and district attorneys shall, when the defendant is convicted, be considered and recovered against him as costs in the suit, and be collected in like manner as costs in civil cases.

SEC. 674. In every case where a criminal action may have been or shall be removed before trial, the costs accruing upon such removal and trial shall be a charge against the county in which the cause of indictment occurred.

SEC. 675. The clerk of the county to which such action is or may be removed, shall certify the amount of said costs to the auditor of his county, which shall be examined, allowed and paid as other county charges.

SEC. 676. That the superseding of any law creating a criminal offence, shall not be held to constitute a bar to the indictment and punishment of a crime already committed, or to bar the trial and punishment of a crime where an indictment has been already found, in violation of the law so superseded, unless the intention to bar such indictment and punishment, or trial and punishment where an indictment has been already found, is expressly declared in the superseding act.

SEC. 677. This act shall take effect from and after its passage.

APPROVED, February 1st, 1864.

sonable cause, shall be liable to every person interested in the will, for the damages they may sustain in consequence of such neglect.

SEC. 7. Any person named as executor in a will which is not in his possession, may present his petition to the probate court which has jurisdiction, praying that the person in possession of the will may be required to produce it, that it may be admitted to probate, and that letters testamentary may be issued to him.

SEC. 8. Any person having an interest in the will, may, in like manner, present a petition, praying that it may be required to be produced, and admitted to probate.

SEC. 9. If it be alleged, in any petition, that any will is in the possession of a third person, and the court shall be satisfied that the allegation is correct, an order shall be issued and served upon the person having possession of the will, requiring him to produce it at a time to be named in the order.

SEC. 10. If he has possession of the will, and neglects or refuses to produce it in obedience to the order, he may, by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he shall produce the will.

SEC. 11. Applications for the probate of a will, and for the issuance of letters, may be made to the probate judge out of term time, or at chambers; and he may also, out of term time, or at chambers, issue all necessary orders and writs to enforce the production of any will. He may also appoint a special term for the hearing of any such application.

SEC. 12. When any will shall have come into the possession of the probate court, and a petition for the probate thereof, and for the issuance of letters testamentary, or letters of administration, with the will annexed, shall have been filed, the court, or judge, shall appoint a time for proving it, which shall not be less than ten, nor more than thirty days, and shall cause notice to be given thereof by the clerk, by publication in some newspaper, if there is one printed in the county, if not, then by notices posted in three public places in the county.

SEC. 13. If the heirs of the testator reside in the county, the court shall also direct citations to be issued and served upon them, to appear and contest the probate of the will at the time appointed.

SEC. 14. If the will is presented by any other person than the one named as executor, or if it be presented by one of several persons named as executors in the will, citations shall also be issued and served upon such person or persons, if resident within the county.

SEC. 15. The court shall also direct subpoenas to be issued to the subscribing witnesses to the will, if they reside in the county.

SEC. 16. At the time appointed, or at any time to which the hearing may be continued, upon proof being made, by affidavit, or otherwise, to the satisfaction of the court, that notice has been given, as required in the preceding sections, the court shall proceed to hear the testimony in proof of the will.

SEC. 17. Any person interested may appear and contest the will. If it appears that there are minors, or persons residing out of the county, who are interested in the estate, the court shall appoint some attorney to represent them.

SEC. 18. If no person shall appear, to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he shall testify that the will was executed, in all particulars, as required by law, and that the testator was of sound mind at the time of its execution.

SEC. 19. If any person appears and contests a will, he shall file a statement in writing of the grounds of his opposition. When any issue or issues of fact shall be joined in the probate court, respecting the competency of the deceased to make a last will and testament, or respecting the execution by the deceased of such last will and testament, under restraint, or undue influence, or fraudulent representations, or for any other cause affecting the validity of such will, the court shall proceed to try and determine such issue or issues of fact, and shall be governed therein by the same rules as provided by law for the trial of issues of fact in the district courts of the territory; *Provided, however,* that no trial by jury of such issue or issues of fact shall be allowed in said court. Issues of fact shall be deemed joined by the filing of the grounds of opposition with the clerk of the probate court.

SEC. 20. If the will is contested, all the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined, and the death, absence or insanity of any of them shall be satisfactorily shown to the court.

SEC. 21. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as evidence of the execution, it may admit proof of the handwriting of the testator, and of the subscribing witnesses, or any of them.

SEC. 22. The testimony of each witness shall be reduced to writing and signed by him, and shall be deemed good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from this territory.

SEC. 23. If the court shall be satisfied, upon the proof taken and from the facts found by it, or by the jury, that the will was duly executed, and that the testator, at the time of the execution, was of sound and disposing mind, and not under restraint, undue influence, or fraudulent misrepresentations, a certificate of the proof and the facts found, signed by the probate judge and attested by the clerk, with the seal of the court, shall be attached to the will.

SEC. 24. The will, and the certificate of the proof thereof, together with the testimony which has been taken, shall be filed by the clerk and recorded by him in a book to be provided for the purpose.

SEC. 25. The record of the will and the exemplification by the clerk in whose custody it may be, shall be received in evidence, and be as effectual in all cases as the original would be if proved.

SEC. 26. All wills which shall have been duly proved and allowed in any other of the United States, or in any foreign country or state, may be allowed and recorded in the probate court of any county in which the testator shall have left any estate; *Provided*, it has been executed in conformity with the laws of this territory.

SEC. 27. When a copy of the will, and the probate thereof, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same shall be filed in court, and the court or judge shall appoint a time of hearing, and notice shall be given in the same manner as in the case of an original will for probate.

SEC. 28. If, on hearing, it shall appear to the court that the instrument ought to be allowed as the will of the deceased, the authenticated copy shall be admitted to probate and recorded, the same as in case of other wills; and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

SEC. 29. If, on hearing it shall appear to the court that the instrument ought to be allowed as the will of the deceased, a copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

SEC. 30. When a will has been admitted to probate, any person interested may, at any time within one year after such

probate, contest the same or the validity of the will. For that purpose he shall file in the court before which the will was proved a petition in writing, containing his allegations against the validity of the will, or against the sufficiency of the proof, and praying that the probate may be revoked.

SEC. 31. Upon the filing of the petition, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators, with the will annexed, and to all the legatees named in the will, residing in the territory, or to their guardians, if any of them are minors, or their personal representatives, if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

SEC. 32. At the time appointed for showing cause, or at any time to which the hearing shall be continued, personal service of the citations having been made upon any person named therein, the court shall proceed to hear the proofs of the parties. If any devisees or legatees named in the will shall be minors, and have no guardians, the court shall appoint some attorney to represent them.

SEC. 33. If, upon the hearing of the proofs of the parties, the court shall decide that the will is, for any reason, invalid, or that it is not sufficiently proved to have been the last will of the testator, the probate shall be annulled and revoked.

SEC. 34. Upon the revocation being made, the powers of the executor or administrator, with the will annexed, shall cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

SEC. 35. The fees and expenses shall be paid by the party contesting the will or the probate, if the will or probate be confirmed. If the probate be revoked, the party who shall have resisted the revocation shall pay the costs and expenses of the proceedings, or the same shall be paid out of the property of the deceased, as the court shall direct.

SEC. 36. If no person shall, within one year after the probate, contest the same, or the validity of the will, the probate of the will shall be conclusive; saving, to infants, married women and persons of unsound mind, a like period of one year after their respective disabilities are removed.

SEC. 37. Whenever any will shall have been lost or destroyed, by accident or design, the probate court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to all persons interested having been first given, as prescribed in regard to proofs of

wills in other cases. All the testimony given shall be reduced to writing, and signed by the witnesses.

SEC. 38. No will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses.

SEC. 39. When any will shall be established, the provisions thereof shall be distinctly stated and certified by the probate judge, under his hand and the seal of his court; and the certificate, together with the testimony upon which it is founded, shall be recorded as other wills are required to be recorded, and letters testamentary, or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved.

SEC. 40. If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator, be granted, the court shall have authority to restrain the administrators or executors so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

III.—LETTERS TESTAMENTARY AND OF ADMINISTRATION, AND BONDS OF EXECUTORS AND ADMINISTRATORS.

- SEC. 41. Letters, etc., to be issued.
42. Executor, who competent, letters with will annexed.
43. Objections to executor, executrix, unmarried.
45. Executor of executor.
46. Letters when executor named is a minor.
47. Powers of administrator, two executors.
49. Powers of administrator, with will annexed.
50. Form of letters testamentary.
51. Form of letters of administration with will annexed.
52. Estates intestate, who entitled to.
53. Who to have preference, discretion in court.
55. Administrator, who may act, administratrix unmarried.
57. Minor administrator, letters how applied for.

- Sec. 59.** When granted, notice of application.
61. Who may contest, hearing, evidence of notice.
64. When letters of administration may be granted.
65. Proof of death of intestate.
66. How administration may be granted to one or more.
67. Petition for revocation, citation and answer.
69. Hearing survivors may obtain, form of letters of administration.
72. Oath of administrator and executor, letters, etc., to be recorded.
73. Bond of administrator and executor, additional bond.
74. Separate bonds, suit on bonds, sureties to justify.
77. Doubtful securities, additional security may be required.
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79. Letters without bond, application for further security.
83. Letters may be revoked, suspending powers of executors.
85. Further security without application.
86. Sureties desiring to be released, when not liable.
88. Failure to find new sureties, addition when made.
90. Special administrator, who may be appointed.
92. Who have preference, bond of, powers and duties.
96. Account and oath of, may be appointed in other cases.
98. Incompetency of one executor of several to act.
99. Incompetency of all the executors.
100. Proof of will after granting letters, etc.
101. Powers of executors in such cases, resignation of.
103. Acts when not valid, transcript of court minutes of appointment.
105. Judge, when not to act, judge of an adjoining county, when to act.

Sec. 41. When any will shall have been proved and allowed, the probate court shall issue letters thereon to the persons named in the will as executors, who are competent to discharge the trust, and who shall appear and qualify.

Sec. 42. No person shall be deemed competent to serve as executor, who, at the time the will is proved, shall be: First. Under the age of majority; or, Second. Who shall have been convicted of an infamous crime; or, Third. Who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust, by reason of drunkenness, improvidence or want of understanding. If any such person be named as the sole executor, in any will, or if all the persons named as executors are incompetent, or shall renounce, or fail to apply for letters, or to appear and qualify, letters of administration, with the will annexed, shall not be issued.

Sec. 43. Any person interested in a will, may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objections shall be heard and determined by the court; a petition may also be filed for the issuance of letters of administration, with the will annexed.

SEC. 44. When an unmarried woman, who shall have been appointed executrix, shall marry, her marriage shall extinguish her authority. When a married woman is nominated as executrix, she may be appointed, and serve, in every respect, as if she were a *femme sole*.

SEC. 45. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator, left unadministered, shall be issued.

SEC. 46. When a person under the age of twenty-one years shall be named executor, letters of administration with the will annexed, shall be granted during the minority of the executor, unless there is another executor who shall accept the trust and qualify, in which case the executor who shall accept the trust and qualify, shall have letters testamentary, and shall administer the estate until the minor shall arrive at full age, when he may be admitted as joint executor.

SEC. 47. When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together. When there are two executors or administrators, the acts of one alone shall be effectual, if the other is absent from the territory, or from any cause is laboring under legal disability from serving, as if he should have given his co-executor, or co-administrator authority, under seal, to act alone or for both; and when there are more than two executors, the act of a majority shall be sufficient.

SEC. 48. Administrators, with the will annexed, shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose.

SEC. 49. Letters testamentary and of administration, with the will annexed, shall be signed by the clerk, and be under the seal of the court.

SEC. 50. Letters testamentary may be in substantially the following form: "The territory of Idaho, county of _____. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of _____, C. D., who is named therein, is hereby appointed executor. Witness, G. H., clerk of the probate court of the county of _____, with the seal of the court affixed, the ____ day of _____, A. D. 18—. (Seal.) By order of the court. G. H., clerk.

SEC. 51. Letters of administration, with the will annexed,

may be substantially in the following form: "The territory of Idaho, county of _____. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the probate court of the county of _____, and there being no executor named in the will, (or, as the case may be), C. D. is hereby appointed as administrator, with the will annexed. Witness, G. H., clerk of the probate court of the county of _____, with the seal of the court affixed, the _____ day of _____, A. D., 18—. (Seal.) By order of the court, G. H., clerk."

SEC. 52. Administration of the estate of a person dying intestate, shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order: First. The surviving husband or wife, or some person whom he or she may request to have appointed. Second. The children. Third the father or mother. Fourth. The brothers. Fifth. The sisters. Sixth. The grandchildren. Seventh. Any other of the children entitled to share in the distribution of the estate. Eighth. The creditors. Ninth. Any of the kindred not above enumerated, within the fourth degree of consanguinity. Tenth. The public administrator. Eleventh. Any person or persons legally competent: *Provided*, That when there was any partnership existing between the intestate, at the time of his death, and any other person, the surviving partner shall in no case be appointed administrator of the estate of such intestate.

SEC. 53. When there shall be several persons claiming and equally entitled to the administration, males shall be preferred to females, and relatives of the whole blood to those of the half blood.

SEC. 54. When there are several persons equally entitled to the administration, the court may, in its discretion, grant letters to one or more of them.

SEC. 55. No person shall be entitled to letters of administration, who shall be—First. Under the age of majority; or, Second. Who shall have been convicted of an infamous crime; or, Third. Who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust, by reason of drunkenness, improvidence, or want of integrity or understanding.

SEC. 56. When any unmarried woman, who shall have been appointed administratrix, shall marry, her marriage shall extinguish her authority.

SEC. 57. If any person entitled to administration shall be a minor, administration shall be granted to his or her guardian.

SEC. 58. Application for letters of administration shall be

made by petition, in writing, signed by the applicant or his counsel, and filed by the clerk of the court. The petition must state the facts essential to give the court jurisdiction of the case, and when the same is known to the administrator, he shall state the name, ages, and residence of the heirs of the deceased, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, and the same shall be afterwards proved in the course of the administration, the decree of administration, and the subsequent proceedings, shall not, on account of such want of jurisdictional averment, be held void.

SEC. 59. Letters of administration shall be granted at a regular term of the court, or at chambers at a special term appointed by the judge for the hearing of the application.

SEC. 60. When any petition praying for letters of administration has been filed, the clerk shall give notice thereof, by causing notices to be posted up in at least three public places in the county, one of which shall be at the place where the court was held. The notice shall state the name of the deceased, the name of the applicant, and the term of the court at which the application will be heard. Such notice shall be given at least ten days before the hearing.

SEC. 61. Any person interested may contest the application, by filing a written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own rights to the administration, and pray that letters be issued to himself, after proper petition filed, and due notice given.

SEC. 62. On the hearing, it being first proved that the notice has been given according to law, the court shall proceed to hear the allegations and proof of the parties, and to order the issuance of letters of administration, as the case may require.

SEC. 63. An entry in the minutes of the court that proof was made, that notice had been given, according to law, shall be conclusive evidence of the fact of such notice.

SEC. 64. Letters of administration may be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuance of letters to themselves.

SEC. 65. Before letters of administration shall be granted on the estate of any person who is represented to have died intestate, the fact of his having died intestate shall be proved by the testimony of the applicant, and the court may also examine any other person concerning the time, place, and manner of the death, the place of his residence at the time of his death, the value and character of his property, and

whether or not the deceased left any will, and may compel any person to attend as a witness for that purpose.

SEC. 66. Administration may be granted to any one or more competent persons, although not entitled to the same, at the request of the person entitled to be joined with such person. The request shall be in writing, and shall be filed in the court. When the person entitled is a non-resident of the territory, affidavits, or depositions, taken *ex parte* before any officer authorized by the laws of the territory or state where the same are taken, to take acknowledgments and administer oaths, may be received as *prima facie* evidence of the identity of the party, if free from reasonable suspicion, and the fact be established to the satisfaction of the court.

SEC. 67. . When letters of administration have been granted to any other person than the surviving husband or wife, the child, the father, mother or the brother of the intestate, any one of them may obtain the revocation of the letters by presenting to the probate court a petition praying the revocation, and that letters of administration be issued to him or her.

SEC. 68. When any such petition is filed, the clerk shall issue a citation to the administrator to appear and answer the petition at the next regular term of the court, or at any special term that may be appointed by the judge.

SEC. 69. At the time appointed—the citation having been duly served and returned—the court shall proceed to hear the allegations and proofs of the parties; and if the right of the applicant is established, and he or she be competent, letters of administration shall be granted to the applicant, and the letters of the former administrator be revoked.

SEC. 70. The surviving husband or wife, when letters of administration have been granted to a child, to the father or to a brother of the intestate, or any of such relatives, when letters have been granted to any other of them, may assert his or her prior right, and obtain letters of administration, and have the letters before granted revoked, in the manner prescribed in the three preceding sections.

SEC. 71. Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

“Territory of Idaho, county of _____. C. D. is hereby appointed administrator of the estate of A. B., deceased. [Seal.] Witness, G. H., clerk of the probate court of the county of _____, with the seal of the court affixed, the ____ day of _____, A. D. 18—. By order of the court. G. H. clerk.”

SEC. 72. Before letters testamentary or of administration shall be issued to the executor or administrator, he shall take

and subscribe an oath or affirmation, before the probate judge or clerk, that he will perform, according to law, the duties of executor or administrator; said oath shall be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by, executors or administrators, with the affidavits and certificates thereon, as provided for in this act, shall be forthwith recorded by the clerk of the court having jurisdiction of the estate, respectively, in a book to be kept by him in his office for that purpose; and the said records and duly certified copies taken therefrom, shall have the same force and effect, in all cases whatsoever, as the original papers would have.

SEC. 73. Every person to whom letters testamentary or of administration shall have been directed to issue, shall, before receiving the letters, execute a bond to the people of the territory of Idaho, with two or more sufficient sureties, to be approved by the probate judge. In form, the bond shall be joint and several, and the penalty shall not be less than twice the value of the personal property belonging to the estate—which value shall be ascertained by the probate judge, by the examining on oath of the party applying, and of any other person he may think proper to examine. The probate judge shall require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. He shall also require bond and sufficient surety for the annual rents, issues and profits of all real estate in his charge, as such executor or administrator, to be approved by the probate judge.

SEC. 74. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

SEC. 75. The bond shall not be void upon the first recovery, but may be sued upon, from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

SEC. 76. In all cases where bonds are required by this act, the sureties must justify, on oath, before the judge or clerk of some court having a seal, to the effect that they are householders, resident within this territory, and are worth the amount justified to, over and above their debts and liabilities, exclusive of property exempt from execution. Such justification shall be in writing, signed by the person justifying, and certified to by the judge or clerk who takes the same, and attached to and filed with the bond. Whenever the

penal sum of the bond amounts to more than two thousand dollars, the sureties may be allowed to become liable for portions of said penal sum, making in the aggregate the whole penal sum of such bond.

SEC. 77. Before the probate judge approves of any bond required by said act, he may, of his own motion, or at any time after the approval of such bond, upon the motion of any person interested in said estate, supported by affidavit, that any one or all of such securities are not worth as much as they have justified to, order a citation to issue, requiring such security or securities to appear before him, at a particular time and place, to testify touching his or their property and its value; and the judge shall, at the time such citation is issued, cause a notice to be issued to the executor or administrator, and requiring his appearance at the return of the citation. Upon the return of the citation, the judge may swear the securities and such witnesses as may be produced, touching the property of such securities and its value; and if, upon such investigation, the judge is satisfied that the bond is insufficient, he may require sufficient additional security, within such time as may be reasonable—not less than five days.

SEC. 78. If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, shall be appointed to the administration.

SEC. 79. When it is expressly provided, in the will of a testator, that no bond shall be required of the executor, letters testamentary may issue without any bond having been given; but an executor, to whom letters have been issued without bond, may, at any time afterward, whenever it may be shown from any cause to be necessary or proper, be required to appear and file a bond, as in other cases.

SEC. 80. Whenever any person interested in any estate, shall discover that the sureties of any executor or administrator have become, or are becoming insolvent, that they have removed, or are about to remove from the territory, or that from any other cause, the bond is insufficient, he may apply, by petition to the probate judge, and require that further security be given.

SEC. 81. If the probate judge shall be satisfied that the matter requires investigation, a citation shall be issued to the executor or administrator, requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation shall be served per-

sonally on the executor or administrator, at least five days before the return day; if he shall have absconded, or cannot be found, it may be served by leaving a copy of it at his last place of residence.

SEC. 82. On the return of the citation, or at such other time as the judge shall appoint, he shall proceed to hear the proofs and allegations of the parties. If it shall satisfactorily appear that the security is, from any cause, insufficient, he may make an order requiring the executor or administrator to give further security, or file a new bond in the usual form, within a reasonable time, not exceeding five days.

SEC. 83. If the executor or administrator neglect to comply with the order, within the time prescribed, the judge shall, by order, revoke his letters, and his authority shall thereupon cease.

SEC. 84. When a petition is presented praying that an executor or administrator be required to give further security, and when it shall also be alleged, on oath or affirmation, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

SEC. 85. When it shall come to his knowledge that the bond of any executor or administrator is, from any cause, insufficient, it shall be the duty of the probate judge, without any application, to cause him to be cited to appear and show cause why he should not give further security, and to proceed thereon, as upon the application of any person interested.

SEC. 86. When either or all of the sureties of any executor or administrator, shall desire to be released from responsibility, on account of his future acts, they may make application to the probate court or judge for relief, and the judge or court shall cause a citation to the executor or administrator to be issued and served, requiring him to appear, at a time and place to be therein specified, and to give other security, which citation shall be served personally.

SEC. 87. If new sureties be given to the satisfaction of the judge, he may, thereupon, make an order that the surety or sureties who applied for relief shall not be liable, on their bond, for any subsequent act, default, or misconduct of the executor or administrator.

SEC. 88. If the executor or administrator neglect or refuse to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, not exceeding five days, unless the surety or sureties making the application shall consent to a longer

extension of time, the court or judge shall, by order, revoke the letters granted.

SEC. 89. The applications, authorized by the nine preceding sections of this act, may be heard and determined out of term time. All orders made therein, shall be entered upon the minutes of the court.

SEC. 90. When there shall be a delay in granting letters testamentary, or of administration, from any cause, or when such letters shall have been granted irregularly, or no sufficient bond shall have been filed, as required by law, or when no application shall have been made for such letters, the probate judge shall appoint a special administrator to collect and take charge of the estate of the deceased, in whatever county or counties the same be found, and to exercise such other powers as may be necessary for the preservation of the estate; or, he may direct the public administrator of his county to take charge of the estate.

SEC. 91. The appointment may be made out of term time, and without notice, and shall be made by entry upon the minutes of the court, which shall specify the powers to be exercised by the administrator. Upon such order being entered, and after the person appointed has given bond, the clerk shall issue letters of administration to such person, in conformity with the order.

SEC. 92. In making the appointment of a special administrator, the probate judge shall give preference to the person or persons entitled to letters testamentary, or of administration, but no appeal shall be allowed from the appointment.

SEC. 93. Before any letters shall issue to any special administrator, he shall give bond in such sum as the probate judge may direct, with sureties, to the satisfaction of said judge, conditioned for the faithful performance of his duties.

SEC. 94. The special administrator shall collect and preserve, for the executor or administrator, all the goods, chattels, and debts, of the deceased, all incomes, rents, issues and profits, claims and demands, of the estate; shall take charge and management of, enter upon, and preserve from damage, waste and injury, the real estate; and for any such, and all necessary purposes, may commence and maintain, or defend, suits and other legal proceedings, as an administrator. He may sell such perishable estate as the probate court may order to be sold, and may exercise such other powers as may have been conferred upon him by his appointment; but, in no case, shall he be liable to an action by any creditor, on any claim against the estate, nor pay any claim against the deceased.

SEC. 95. When letters testamentary, or of administration,

on the estate of the deceased, have been granted, the powers of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the property and effects of the deceased in his hands; and the executor or administrator may be permitted to prosecute to final judgment any suit commenced by the special administrator.

SEC. 96. The special administrator shall also render an account, on oath, of his proceedings, in like manner as other administrators are required to do.

SEC. 97. Whenever an executor or administrator shall die, or his letters be revoked, and the circumstances of the estate require the immediate appointment of an administrator, the probate judge may appoint a special administrator, as provided in the preceding sections.

SEC. 98. In case any one of several executors or administrators, to whom letters shall have been granted, shall die, become lunatic, be convicted of an infamous offence, or otherwise become incapable of executing the trust, or in case the letters testamentary or of administration shall be revoked, or annulled, according to law, with respect to any one executor or administrator, the remaining executor or administrator shall proceed and complete the execution of the will or administration.

SEC. 99. If all such executors or administrators shall die or become incapable, or the power and authority of all of them shall be revoked according to law, the probate court shall issue letters of administration, with the will annexed, or otherwise, to the widow or next of kin, or others, in the same manner as is directed in relation to original letters of administration. The administrators so appointed shall give bond in the like penalty, with like sureties and conditions as herein before required of administrators, and shall have the like power and authority.

SEC. 100. If, after granting letters of administration on the grounds of intestacy, a will of the deceased shall be duly proved and allowed by the court, the letters of administration shall be revoked, and the power of the administrator shall cease, and he shall render an account of his administration within such time as the court shall direct.

SEC. 101. In such case, the executor of the will, or the administrator, with the will annexed, shall be entitled to demand, sue for, and collect all the rights, goods, chattels, and effects of the deceased, unadministered, and may be admitted to prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

SEC. 102. Any executor or administrator may, at any time, by writing filed in the probate court, resign his appointment: *Provided*, he shall first settle his accounts, and deliver up all the estate to such person as may be appointed by the court.

SEC. 103. All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, shall be as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

SEC. 104. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of the court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

SEC. 105. No probate judge shall admit to probate any will or grant letters testamentary or of administration, in any case where he shall be interested as next of kin to the deceased, or as a legatee or devisee under the will, or where he shall be named as executor or trustee in the will, or shall be a witness thereto.

SEC. 106. When any probate judge, who would otherwise be authorized to act, shall be precluded from acting, from the cause mentioned in the preceding section, or when he shall be in any manner interested, upon a representation, and due proof thereof, to the probate judge of an adjoining county, such judge shall be vested with all the powers and authority of the proper probate judge, in relation to the proof of any will and the granting of letters testamentary or of administration thereon, and the granting of letters of administration in cases of intestacy, and shall retain jurisdiction as to all subsequent proceedings in regard to the estate.

IV.—THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

SEC. 107. Inventory, etc., to be returned, appraisement, how made.

109. Appraisers to take oath, inventory, what to contain.

111. Debtor as executor, effect of.

112. Executor, effect of discharge of.

113. Inventory to be signed and sworn to, by whom.

SEC. 114. Inventory, neglect to return.

115. Inventory of, after discovered property.

116. Executor, etc., rights of, debts of estate, how paid.

118. Embezzling or aliening estate before granting letters.

119. Proceedings on information of embezzlement.

120. Person refusing to appear when cited for examination.

121. Account, person intrusted in estate may be cited.

SEC. 107. Every executor or administrator shall make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the deceased which shall have come to his possession or knowledge.

SEC. 108. For the purpose of making the appraisement, the court or judge shall appoint three disinterested persons—any two of whom may act, and who shall be entitled to receive a reasonable compensation for their services, to be allowed by the court; their compensation, as allowed, shall be in the form of a bill of items of their services, including all necessary disbursements, which shall be sworn to by them and filed with the inventory, and which shall not exceed five dollars per day. If only one day's services are charged, the bill need not be sworn to. If any part of the estate shall be in any other county than that in which letters issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the case, or by the probate judge of such county.

SEC. 109. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath, to be attached to the inventory, that they will truly, honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability. They shall then proceed to estimate and appraise the property; each article shall be set down separately, with the value thereof, in dollars and cents, in figures, opposite to the articles respectively. The inventory shall contain all the estate of the deceased, real and personal; a statement of all debts, partnerships and other interests; bonds, mortgages, notes and other securities for the payment of money, belonging to the deceased—specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, may be collectable on each debt, interest or security. The inventory shall show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property, and what portion is the separate property of the deceased.

SEC. 110. The inventory shall also contain an account of

all moneys belonging to the deceased, which shall have come to the hands of the executor or administrator; and if more shall have come to his hands, the fact shall be so stated in the inventory.

SEC. 111. , The naming any person executor in a will, shall not operate as a discharge of any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands at the time the debt or demand becomes due.

SEC. 112. The discharge or bequest, in a will, of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in the payment of his debts. If not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

SEC. 113. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe an oath, before the probate judge, or the clerk of the county or any officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the deceased which has come to the knowledge and possession, and particularly of all money belonging to the deceased, and of all just claims of the deceased against the executor or administrator. The oath shall be indorsed upon, or annexed to, the inventory.

SEC. 114. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding two months, as the court or judge shall for reasonable cause allow, the court may, with or without further notice, revoke the letters testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate by his neglect.

SEC. 115. Whenever property not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in the manner prescribed in this act, and an inventory to be returned within two months after the discovery thereof; and the making of such inventory may be enforced after notice, by attachment or removal from office.

SEC. 116. The executor or administrator shall have a right to the possession of all the real, as well as personal estate of

the deceased, and may receive the rents and profits of the real estate, until the estate, shall be settled, or until delivered over, by order of the probate court, to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings and fences thereon, which are under his control.

SEC. 117. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits, in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, and the expenses of administration, and the allowances to the family of the deceased, the whole of the real estate may be sold, for that purpose, by the executor or administrator, in the manner prescribed by this act.

SEC. 118. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects, of any deceased person, he shall stand chargeable and be liable to the action of the executor or administrator of the estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

SEC. 119. If any executor, or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge, on oath, that any person is suspected to have concealed, embezzled, conveyed away, or disposed of, any moneys, goods, or chattels, of the deceased, or that he has in his possession, or knowledge, any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose the right, title, interest, or claim of the deceased, to any real or personal estate, or any claim or demand, or any last will of the deceased, the said judge may cite such person to appear before the probate court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined either before the probate court of the county where he may be found, or before the court issuing the order or citation. But if, in the latter case, he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

SEC. 120. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him or her, touching the matter of such complaint, the court may, by warrant for that purpose, commit him or her to the county jail, there to remain in close custody until he or she shall submit to the order of the court, or be

discharged according to law; and if, upon such examination, it shall appear that such person has concealed, embezzled, smuggled, conveyed away, or disposed of, any moneys, goods, or chattels, of the deceased, or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of, or tend to disclose the right, title, interest or claim of the deceased to any real or personal estate, claim or demand, or any last will of the deceased, the probate court may make an order requiring such person to disclose his knowledge thereof to said administrator, and may commit said person to the county jail, there to remain until such order be complied with, or be discharged according to law; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court. The order for such disclosure, made upon such examination, shall be *prima facie* evidence of the right of such administrator to such property, in any action that may be brought for the recovery thereof; and any judgment, accorded therein, shall be for the double value of the property, and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

SEC. 121. The probate judge, upon the complaint, on oath, of any executor or administrator, may cite any person who shall have been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels bonds, accounts, or other papers belonging to the estate, which shall have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and render such account, the court may proceed against him as provided in the preceding section.

V.—PROVISION FOR THE SUPPORT OF THE FAMILY.

SEC. 122. Family may retain homestead.

123. Property may be set apart for family use.

124. Court may make allowance out of estate.

125. Allowance to have priority.

126. Family, what property set apart for.

Sec. 127. Property set apart, how apportioned.

128. When entire estate to be set apart.

129. When to go to children.

SEC. 122. When a person shall die, leaving a widow, or a minor child or children, the widow, child, or children shall, until letters have been granted, and the inventory has been returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

SEC. 123. Upon the return of the inventory, or at any subsequent time during the administration, the court or probate judge, may, of his own motion, or on application, set apart for the use of the family of the deceased, all personal property which is by law exempt from execution, and the homestead, as designated by the general homestead law, or by section one hundred and twenty-six of this act.

SEC. 124. If the whole property exempt by law be not included in the inventory, and if the amount set apart be insufficient for the support of the widow and child or children, the probate court shall make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, shall not be longer than one year after granting letters of administration.

SEC. 125. Any allowance made by the court, in accordance with the provisions of this act, shall be paid by the administrator in preference to all other charges, except funeral charges and expenses of administration.

SEC. 126. If there is no law in force exempting property from execution, the following shall be set apart for the use of the widow or minor child or children, and shall not be subject to administration: First. All spinning wheels, weaving looms, and stoves put up or kept for use. Second. The family bible, family pictures, and school books and library, not exceeding in value two hundred dollars. Third. All sheep, to the number of twenty, with their fleeces, and the yarn or cloth manufactured from the same; two cows, five swine, with the necessary food for them for six months. Fourth. All wearing apparel of the widow and children, and all household goods, furniture and utensils, not exceeding in value seven hundred and fifty dollars. Fifth. The homestead, consisting of any quantity of land not exceeding twenty acres and the dwelling house thereon, with its appurtenances—not being

included in any incorporated town or city; or, instead thereof a quantity of land, not exceeding one lot, in any incorporated town or city, and the dwelling house thereon and its appurtenances—to be selected by the widow, or, if there be no widow, to be designated by the probate judge, and not to exceed, in any case, more than three thousand dollars in value.

SEC. 127. When property shall have been set apart for the use of the family, in accordance with the provisions of this act, if the deceased shall have left a widow and no minor child, such property shall be the property of the widow. If he shall have left, also, a minor child or children, the one-half of such property shall belong to the widow and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow, the whole shall belong to the minor child or children.

SEC. 128. If, on the return of the inventory of any intestate estate, it shall appear that the value of the whole estate does not exceed the sum of five hundred dollars, the probate court shall, by a decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole of the estate, after the payment of the funeral charges and expenses of administration; and there shall be no further proceedings in the administration, unless further estate be discovered; and when it shall appear that the value of the whole estate does not exceed the sum of one thousand dollars, it shall be in the discretion of the probate court to dispense with the regular proceedings, or any part thereof, prescribed in this act, for the purpose of a summary administration of the estate, and to order distribution of the estate at the end of six months after the issuance of letters; *Provided*, that notice to creditors shall have been given to present their claims within four months after the first publication of such notice.

SEC. 129. If the widow has a maintenance derived from her own property, equal to the portion set apart to her by the one hundred and twenty-fifth and one hundred and twenty-sixth sections of this act, the whole property so set apart shall go to the minor children.

VI.—OF CLAIMS AGAINST THE ESTATE.

SEC. 130. Claims to be advertised for, notice to be filed,

131. Claims against estate, when barred, how supported, interest on.

Sec. 133. Probate judge may present claim.

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150. Sale of perishable property for allowance to family, notice of.

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185. Executor to assign contract, mortgage on land.

187. Expenses of, misconduct in sale.

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192. Account of, not to purchase.

Sec. 130. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper published in the county, if there be one—if not, then in such newspaper as may be designated by the court—a notice to the creditors of the deceased, requiring all persons having claims against the deceased to exhibit them, with the necessary vouchers, within ten months after the first publication of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge or

court shall direct, but not less than once a week for four weeks. The court or judge may also direct additional notice by publication or posting. In case such executor or administrator resign or be removed before the expiration of ten months after the first publication of such notice, his successor shall give such notice only for the unexpired portion of the ten months. After the notice shall have been given, as required by the preceding section, a copy thereof, with the affidavit or affidavits of due application, or of publication and posting, may be filed; and upon such affidavit or affidavits, or upon other testimony, to the satisfaction of the court, a decree shall be made, showing that due and legal notice to the creditors has been given, and directing that such decree be entered in the minutes of the court.

SEC. 131. If a claim be not presented within ten months after the first publication of the notice, it shall be barred forever; *Provided*, If it be not then due, or if it be contingent, it may be presented within ten months after it shall become due or absolute; and, *Provided further*, That when it shall be made to appear, by the affidavit of the claimant, to the satisfaction of the executor or administrator and the probate judge, that the claimant had no notice, as provided in this act, by reason of absence from this territory, it may be presented at any time before a decree of distribution is entered.

SEC. 132. Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same, to the knowledge of the claimant, or other affiant: *Provided*, that when the affidavit is made by any other person than the claimant, he shall set forth in the affidavit the reasons it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator shall also require satisfactory vouchers, or proofs, to be produced in support of the claim. The amount of interest shall be computed and included in the statement of the claim, and the rate of interest determined: *Provided*, That no claim which shall have been due and payable thirty days prior to the death of the deceased, shall bear greater interest than ten per cent. per annum, from and after the time of issuing letters.

SEC. 133. Any probate judge may present a claim against the estate of any deceased person, for allowance, to the executor or administrator of such estate; and if the executor or administrator allows such claim, he shall, in writing, designate some probate judge of an adjoining county; and the probate judge, so designated by the executor or administrator, shall,

upon the presentation of such claim to him, have the same power to allow or to reject it, as he would have if the will had been proved or administration granted in his own county; and the probate judge presenting such claim, shall, in case of its rejection by the executor or administrator, or by such probate judge as shall have acted upon it, have the same right to sue in a proper court for its recovery, as other persons have when their claims against an estate are rejected.

SEC. 134. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall endorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim it shall be presented to the probate judge for his approval, who shall in the same manner endorse upon it his allowance or rejection. If the executor or administrator, or the judge, refuse or neglect to endorse such allowance or rejection, for ten days after the claim shall have been presented to him, such refusal or neglect may be deemed equivalent to a rejection; and if a presentation be made by a notary, the certificate of such notary under seal, shall be *prima facie* evidence of such presentment and rejection, and if made by any person other than the claimant, or notary, the affidavit of such person to the fact shall be *prima facie* evidence of such presentment and rejection. If the claim be presented to the executor or administrator, before the expiration of the time limited for the presentation of claims, the same may be held valid, though acted upon by the executor or administrator, and by the judge, after the expiration of such time.

SEC. 135. Every claim which has been allowed by the executor or administrator, and approved by the probate judge, shall, within thirty days thereafter, be filed in the probate court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim be founded on a bond, bill, note, or other instrument, the original instrument shall be presented, and the allowance and approval, or rejection, shall be endorsed thereon, or be attached thereto. If the claim, or any part thereof, be secured by a mortgage, or other lien, such mortgage or evidence of lien shall be attached to the claim and filed therewith, unless the same be recorded in the office of the recorder of the county in which the land lies, in which case it shall be sufficient to describe the mortgage or lien, and refer to the date, volume and page of its record. And in all cases, it shall be permitted to the claimant to withdraw his claim from file, on leaving a certified copy, with a receipt endorsed thereon by himself or his agent. A brief description of every claim filed, shall be

entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest and date of approval: *Provided*, If such original instrument be lost or destroyed, then in lieu thereof the claimant shall be required to file his affidavit, particularly describing such instrument, and stating the loss or destruction thereof, upon which affidavit the indorsement hereinafter mentioned shall be made.

SEC. 136. When a claim is rejected either by the executor or administrator, or probate judge, the holder shall bring suit in the proper court against the executor or administrator, within three months after the date of its rejection, if it be then due, or within three months after it becomes due; otherwise the claim shall be forever barred.

SEC. 137. No claim shall be allowed by the executor or administrator, or by the probate judge, which is barred by the statute of limitations.

SEC. 138. No holder of any claim against an estate, shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

SEC. 139. The time during which there shall be a vacancy in the administration, shall not be included in any limitations herein prescribed.

SEC. 140. If an action be pending against the testator or intestate, at the time of his death, the plaintiff shall in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases, and no recovery shall be had in the action, unless proof be made of the presentments.

SEC. 141. Whenever any claim shall be presented to any executor or administrator, or to the probate judge, and he shall be willing to allow the same in part, he shall state in his indorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action which he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

SEC. 142. The effect of any judgment rendered against any executor or administrator, upon any claim for money against the estate of his testator or intestate, shall be only to establish the claim, in the same manner as if it had been allowed by the executor or administrator and the probate judge; and the judgment shall be, that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the probate court. No execution shall issue

upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

SEC. 143. When any judgment has been rendered against the testator or intestate in his life, no execution shall issue thereon after his death; but a certified copy of such judgment shall be presented to the executor or administrator, and be allowed and filed, or rejected, as any other claim, but need not be supported by the affidavit of the claimant; and, if justly due and unsatisfied, shall be paid in due course of administration; *Provided, however*, that if the execution shall have been actually levied upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands. The executor or administrator may, however, require the affidavit of the claimant, or other satisfactory proof, that the judgment or any portion thereof is justly due and unsatisfied.

SEC. 144. When a judgment has been recovered, with costs, against any executor or administrator, the executor or administrator shall be individually liable for the costs; but they shall be allowed him in his administration accounts, unless it shall appear that the suit or proceedings in which the costs were taxed shall have been prosecuted or resisted without just cause.

SEC. 145. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection to the probate judge; and its allowance by the judge shall be sufficient evidence of its correctness.

SEC. 146. If any executor or administrator shall neglect, for two months after his appointment, to give notice to creditors, as prescribed by this chapter, it shall be the duty of the court to revoke his letters.

SEC. 147. At the same term at which he is required to return his inventory, the executor or administrator shall also return a statement of all claims against the estate, which shall have been presented to him, when required by the court; and from term to term thereafter, shall present a statement of claims subsequently presented to him. In all such statements he shall designate the names of the creditors, the nature of each claim, when it became due or will become due, and whether it was allowed or rejected by him.

SEC. 148. No sale of any property of an estate of a deceased person shall be valid unless made under an order of

the probate court, except as otherwise provided in this act or other acts.

SEC. 149. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts, showing the sale to be necessary; and upon the hearing, any person interested in the estate may file his written objections, which shall be heard and determined.

SEC. 150. At any time after receiving letters, the executor or administrator, or special administrator, may apply to the court or judge, for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold, to pay the allowance made to the family of the deceased. If there be a delay in obtaining such order, such property may be sold without an order of sale; *Provided*, That the executor, or administrator, or special administrator, shall be held responsible for such property, unless, after making a sworn return, and on a proper showing, the court shall approve such sale. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, the executor or administrator may also apply for an order to sell so much of the personal property as shall be necessary. Upon filing his petition, notice of at least five days shall be given of the hearing of the application, either by posting notices, or by advertising. He may make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands, and a sale thereof is necessary; and if he deem it for the best interest of the estate, he may, at any time after the filing of the inventory, make an application in like manner, and after giving like notice, for an order to sell the whole of the personal property belonging to the estate.

SEC. 151. If it appear that a sale is necessary, or for the best interest of the estate, the court or judge shall order it to be made. In making such sales, the court or judge shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or are not specially bequeathed, to be first sold. Articles so bequeathed shall not be sold until the residue of the personal estate has been applied to the payment of the debts.

SEC. 152. The sale of personal property shall be made at public auction, and after public notice given for at least ten days, unless, for good reason shown, the court or probate judge shall order a private sale, or a shorter notice. Public sales of such property shall be made at the court house door, at the residence of the deceased, or at some other public place,

to be mentioned in the notice; and no sale shall be made of any property which is not present at the time of selling.

SEC. 153. The notice shall be given by notices posted in three public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be specified the time and place of the sale.

SEC. 154. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, the debts that may be outstanding against the deceased, and the debts, expenses, and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon order of the probate court.

SEC. 155. To obtain such order, he shall present a petition to the probate court, or to the judge at chambers, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of, the debts outstanding against the deceased, as far as the same can be ascertained or estimated, the amount due upon the family allowance, or that will be due after the same shall have been in force for one year, the debts, expenses, and charges of the administration already accrued, and an estimate of what will or may accrue during the administration, a description of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the intestate estate has acquired any interest, and the condition and value of the respective portions and lots, and whether the same be community or separate property, the names and ages of the devisees, if any, and of the heirs of the deceased; which petition shall be verified by the oath of the party presenting the same. If the inventory and appraisement on file contain a full description of the personal estate of the deceased, and of all the real estate of which the testator or intestate died seized, or in which he had any interest, or in which the estate had acquired any interest, such inventory, by a proper reference, may be made a part of the petition, for a description of the personal estate, or real estate, or both; and if the same be full as to all property, except property subsequently discovered, or profits subsequently received, such reference may be had to the inventory, and the additional property may be set forth in the petition. If all the matters above enumerated cannot be ascertained, the same shall be so stated in the petition.

SEC. 156. If it shall appear to the court or judge, by such petition, that it is necessary to sell the whole or some portion of the real estate for the purpose mentioned in section one

hundred and fifty-four of this act, or any or either of them, such petition shall be filed, and an order shall thereupon be made, directing all persons interested in the estate to appear before the court at a time and place specified, not less than four, nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator, to sell so much of the real estate of the deceased as shall be necessary.

SEC. 157. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least five days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court or judge shall order: *Provided, however,* If all persons interested in the estate, shall signify, in writing, their assent to such sale, the notice may be dispensed with.

SEC. 158. The probate court, at the time and place appointed in such order, or at such other time as the hearing may be adjourned to, upon satisfactory proof of the due service or publication of a copy of the order, by affidavit, or otherwise, or upon filing the consent in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and, if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

SEC. 159. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, a copy of the order shall be served upon the guardian, at least ten days before the actual hearing. If they have no guardian, the court or judge shall, at the time of filing the petition, or before proceeding to act upon the petition, appoint some disinterested person their attorney, for the sole purpose of appearing for them, and taking care of their interest in the proceedings. The court may also, upon the hearing, if it be deemed necessary, appoint such attorney for the heirs or devisees, if they are unrepresented, whether minors or otherwise, and may likewise, appoint an attorney for the creditors, if they are unrepresented. If such guardian of the minors, or such attorney for minors, or others, appear on the hearing, such appearance shall be evidence of service of notice upon such guardian or attorney.

SEC. 160. The executor or administrator may be examined on oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the probate judge, in the same manner and with like effect as in other causes.

SEC. 161. If it shall appear to the court that it is necessary to sell a part of the estate, real or personal, and that by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured or diminished, or subject to expenses, or rendered unprofitable, the court may authorize the sale of the whole estate, or of such part thereof as may be judged necessary, and best for the interest of all concerned.

SEC. 162. If the court shall be satisfied, after a full hearing upon the petition, and an examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate, is necessary for any of the causes mentioned in sections one hundred and fifty and one hundred and fifty-four of this act, or if such sale be assented to by all the persons interested, an order of sale shall be made, authorizing the executor or administrator to sell the whole, or so much, and such parts of the real estate described in the petition, as the court shall judge necessary or beneficial.

SEC. 163. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash, or on a credit not exceeding one year, payable in gross or installments, with interest, as the court may direct. The tract or tracts of land may be sold in one parcel, or in subdivisions, as the executor or administrator shall judge most beneficial to said estate unless the court shall otherwise direct. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the court shall order that part descended to heirs to be sold before that so devised. Every such sale shall be ordered to be made at public auction, unless, in the opinion of the court, it would benefit the said estate to sell the whole, or some part of such real estate at private sale, in which case the court, if the same is asked for in the petition, may order or direct such real estate, or any part thereof, to be sold at either public or private sale, as the executor or administrator shall judge to be most beneficial for said estate. If the executor or administrator shall neglect or refuse to make a sale, under the order of sale, he may be compelled to proceed to sell by order of the court, made on motion, after due notice, by any party interested.

SEC. 164. If the executor or administrator shall neglect to apply for an order of sale, whenever it may be necessary, any person interested in the estate may make application therefor, in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing. The petition of such applicant shall contain as many of the matters set forth in section one hundred

and fifty-five of this act as he can ascertain, and the decree of sale shall fix the period of time within which the executor or administrator shall make the sale.

SEC. 165. Upon making such order mentioned in the last section, a certified copy of the order shall be delivered by the court, or the clerk, to the executor or administrator, who shall be thereupon authorized and required to sell the real estate as directed.

SEC. 166. When a sale is ordered, notice of the time and place of holding the same shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there be one printed in the same county, and if there be none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the land and tenements to be sold shall be described with common certainty.

SEC. 167. Such sale shall be made in the county where the land is situated, but where the tract of land is situated in two or more counties, it may be sold in either of said counties. The sale shall be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and shall be made at public auction, unless the court shall have ordered the real estate, or some part thereof, to be sold either at public or private sale; but the same shall not be sold at private sale, until after notice of the time and place and terms of such sale shall have been given according to law, as in cases of sales at public auction; nor shall such sale, at private sale, be made unless the real estate to be sold shall have been appraised within a year previous to the time of such sale; nor shall the same be sold at private sale for more than ten per cent. less than the appraised value thereof. If said real estate has not been so appraised, or if the court shall be satisfied that the appraisement is too high or too low, appraisers shall be appointed, and they shall make an appraisement thereof in the same manner as in the case of the appraisement of the inventory.

SEC. 168. The executor or administrator shall, when the sale is made upon a credit, take the note or notes of the purchaser for the purchase money, with a mortgage on the property to secure their payments.

SEC. 169. The executor or administrator making any sale of any real estate, shall, at the next term of the court thereafter, after making any such sale, upon notice of at least ten days, to be given in such manner as the court or judge may direct, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion

that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid at least ten per cent. exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given, and the sale shall be in all respects conducted as if no previous sale had taken place: *Provided*, That if an offer of ten per cent. or more, exclusive of the expenses of a new sale, be made to the court in writing by a responsible person, it shall be in the discretion of the court to accept and confirm the sale to such person, or to order a new sale.

SEC. 170. When the return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation of the sale, and they may be heard on said first day of the term subsequent to the sale, or any subsequent day to which the matter may be continued, or upon any day that may be fixed by the order of the court or judge, and may produce witnesses in support of his objections.

SEC. 171. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold; or, if disproportionate, that a greater sum, as above specified, cannot be obtained; or if the advance bid mentioned in section one hundred and sixty-seven of this act be made and accepted by the court, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale from that time shall be confirmed and valid, and a certified copy of the order authorizing the sale and of the order confirming the same and directing conveyances to be executed, shall be recorded in the office of the recorder of the county within which the land sold is situated; *Provided*, That if, after such confirmation, the purchaser shall neglect or refuse to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a new sale of the property sold to such purchaser. If the amount realized on such re-sale do not cover the bid and the expenses of the previous sale, such purchaser shall be liable for the deficiency.

SEC. 172. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator. They shall refer to the orders of the probate court authorizing and confirming the sale of the property of the testator or intestate, and directing conveyances thereof to be executed, and to the record of such orders in the office of the county recorder, either by the date of such recording or by the date and volume and page of such record; and such reference shall have

the same effect as if the said orders were at large inserted in the conveyance. The conveyances so made shall be deemed to convey all right, title and interest and estate of the testator or intestate in the premises at the time of his death. When, however, by operation of law or otherwise, the estate shall have acquired any right, title or interest in the premises, other than, or in addition to, that of the testator or intestate, at the time of his death, such right, title or interest shall also be passed by such conveyances.

SEC. 173. Before any order is entered confirming the sale, it shall be proved to the satisfaction of the court that notice was given of the sale as herein prescribed, and the order of confirmation shall state that such proof was made.

SEC. 174. If, at the time appointed for the same, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale shall be postponed, he may adjourn the same from time to time, not exceeding in all three months.

SEC. 175. In case of the adjournments, notice thereof shall be given by a public declaration at the time and place first appointed for the sale; and if the adjournment be for more than one day, further notice shall be given by posting notices, in three or more public places in the county where the land is situated, or publishing the same, or both, as time and circumstances will admit.

SEC. 176. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay a legacy together with his debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell his real estate for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this act in case of a sale for the payment of his debts.

SEC. 177. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

SEC. 178. When such provision has been made, or any property directed by the will to be sold, whether the payment of debts or expenses, or for any other purpose, the executor or administrator, with the will annexed, may proceed to sell, without the order of the probate court, but he shall be bound as an administrator to give notice of the sale, and to return

accounts thereof to the court, and to proceed in making the sale in all respects as if it were made under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions. But in all cases, no sale shall be valid unless confirmed by the court, under the rules prescribed in cases of sales of real estate by an administrator; and before granting such confirmation, the court may require security, as in cases of sales of land by an administrator.

SEC. 179. If the provision made by the will, or the estate appropriated, be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this act.

SEC. 180. The estate, real and personal, given by will to any legatees or devisees, shall be held liable to the payment of debts, expenses of administration and family expenses, in proportion to the value or amount of the several devises or legacies, except that specified devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

SEC. 181. When the estate given by any will has been sold for the payment of any debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of debts or expenses; and the probate court, when distribution is made, shall, by decree for that purpose, settle the amount for the several liabilities, and decree how much each person shall contribute.

SEC. 182. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this act, in respect to lands of which he died seized, except as hereinafter provided.

SEC. 183. Such sale shall be made subject to all payments that may hereafter become due on such contracts; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchasers shall execute a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indem-

nity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the probate judge shall approve.

SEC. 184. Such bond shall be conditioned that the purchaser will make all payments for such land that shall become due after the date of such sale, and will indemnify the executor or administrator, and the person so entitled, against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 185. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interest of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if he were living.

SEC. 186. When any sale is made by an executor or administrator, pursuant to the provisions of this act, of land subject to any mortgage or lien, which is a valid claim against the estate of the deceased, the purchase money shall be applied, after paying the necessary expenses of the sale, first to the payment and ratification of the mortgage or lien, and the residue in due course of administration. Such application of the purchase money to the satisfaction of the mortgage or lien, shall be made without delay; and the land shall remain subject to such mortgage or lien, until the purchase money shall have been actually so applied: *Provided, however,* That when it shall be shown to be necessary, the court may direct that sufficient of the purchase money be retained to meet such portions of the family allowance and charges, and expenses of administration, as may properly be required from the holder of such claims. Such reservation of a portion of the purchase money shall not prevent the discharge of the mortgage or lien, and no lien against any estate shall be affected by the statute of limitations, pending the proceedings for the settlement of such estate.

SEC. 187. In all cases in which land is sold by an executor or administrator, the necessary expenses of the sale shall first be paid out of the proceeds.

SEC. 188. If there be any neglect or misconduct in the proceedings of an executor in relation to any sale, by which any person interested in the estate shall suffer damages, the

party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

SEC. 189. An executor or administrator, who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this act, shall be liable in double the value of the land sold, as damages, to be recovered in an action by the person having an estate of inheritance therein.

SEC. 190. No action for the recovery of any estate, sold by an executor or administrator under the provisions of this act, shall be maintained by any heir, or other person claiming under the deceased testator or intestate, unless it be commenced within three years next after the sale.

SEC. 191. The preceding section shall not apply to minors, or others, under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within three years after the removal of the disability.

SEC. 192. Whenever a sale has been made by an executor or administrator of any property of the estate, real or personal, it shall be his duty to return to the probate court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

SEC. 193. No executor or administrator shall, directly or indirectly, purchase any property of the estate he represents.

VII.—OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

SEC. 194. To take possession of, may sue and be sued for recovery of.

196. May sue for trespass.

198. Partnership interest to be appraised.

199. Action on bond of, who to join in action.

201. Debts compounded.

202. Recovery of property fraudulently disposed of by the testator.

204. Disposition of, so recovered.

SEC. 194. The executor or administrator shall take into his

possession all the estate of the deceased, real and personal, and shall collect all debts due to the deceased.

SEC. 195. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

SEC. 196. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased in his lifetime.

SEC. 197. Any person, or his personal representatives, shall have action against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

SEC. 198. When there was any partnership existing between the testator or intestate at the time of his death, and any other person, the surviving partner shall have the right to continue in possession of the effects of the partnership, and to settle its business, but the interest of the deceased shall be included in the inventory, and appraised as other property. The surviving partner shall proceed to settle the affairs of the partnership without delay, and shall account with the executor or administrator, and pay over such balance as may from time to time be payable to him in right of his testator or intestate. Upon the application of the executor or administrator, the probate judge may, whenever it may appear necessary, order the surviving partner to render an account, and in case of neglect or refusal, may, after notice, compel it by attachment. And the executors or administrators may maintain against him any action which his testator or intestate could have maintained.

SEC. 199. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of the executor, or of any former administrator of the same estate.

SEC. 200. In actions brought by or against executors, it shall be necessary to join those as parties to whom letters shall have been issued and who have not qualified.

SEC. 201. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the probate court or judge, may com-

pound with him and give him a discharge, upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it shall appear to be just and for the best interest of the estate.

SEC. 202. When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his life time have conveyed any real estate, or any rights and interest therein, with intent to defraud his creditors, or to avoid any right, debt or duty of any person, or shall have so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditor all such real estate, so fraudulently conveyed; and may, also, for the benefit of the creditors, sue and recover all goods, chattels, rights or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 203. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceeding section, for the benefit of the creditors, unless on application of creditors of the deceased; nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof as the probate judge shall direct.

SEC. 204. All real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining an order therefor from the probate court; and the proceeds of all goods, chattels, rights and credits so recovered shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

VIII.—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

- SEC. 205. Contracts for sale to be completed, petition for, hearing of.
208. Order to execute conveyance.
209. Appeal from order.
210. Petition dismissed.
211. Effect of conveyance.
212. Effect of recording decree, enforcing the same.
214. Death of party to whom conveyance is made.

SEC. 205. When any person who is bound by contract, in writing, to convey any real estate, shall die before making the conveyance, the probate court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

SEC. 206. On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court; and shall order notice of the pendency thereof, and of the time and place of hearing, to be published at least four successive weeks before such hearing, in such newspaper in this territory as he may designate.

SEC. 207. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof, by affidavit or otherwise, of the due publication of the notice, the court shall proceed to a hearing; and all persons interested in the estate may appear and contest such petition, by filing their objections, in writing; and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

SEC. 208. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the court be satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, the court shall make a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

SEC. 209. Any person interested may appeal from such decree to the district court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be affirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree; and a certified copy thereof shall be recorded with the deed, in the office of the recorder, in the county where the lands lie, and shall be evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance.

SEC. 210. If, upon a hearing in the probate court, as herein before provided, the court shall doubt the right of the petitioner to have a specific performance of the contract, the court shall dismiss the petitioner, without prejudice to the

rights of the petitioner, who may, at any time within six months thereafter proceed in the district court to enforce a specific performance.

SEC. 211. Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall be effectual to pass the estate contracted for as fully as if the contracting party himself was still living and then executed the conveyance.

SEC. 212. A copy of the decree for a conveyance made by the probate court, and duly certified and recorded in the office of the recorder of the county where the lands lie, shall give the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

SEC. 213. The recording of any decree, as provided above, shall not prevent the court making such decree from enforcing the same by other process.

SEC. 214. If the person to whom the conveyance was to be made shall die before the commencement of the proceedings, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or may prosecute the same, if already commenced, and the conveyance shall be so made as to vest the estate in the same person who would have been entitled to it, or in the executor or administrator for their benefit.

IX.—ACCOUNTS TO BE RENDERED BY EXECUTORS AND ADMINISTRATORS, AND PAYMENT OF DEBTS.

SEC. 215. Executor when personally liable for.

216. Executor with what chargeable.

217. Executor no profit or loss to.

218. Uncollected debts, compensation of executor.

220. Not to purchase claims against estate.

221. Commission in lieu of compensation.

222. Accounts, citation for.

- Sec. 224.** Exhibit of receipts, citation for, objection.
- 227. Attachment for disobeying citation.
- 228. Account, when to be rendered, what to prohibit.
- 229. Account after authority is revoked.
- 230. Revocation for failure to account.
- 231. Vouchers for all payments.
- 232. Items less than twenty dollars excepted.
- 233. Notice of settlement, exceptions to account.
- 235. Minor to have guardian.
- 236. Referees to be appointed, settlement to be conclusive.
- 238. Proof of notice of settlement.
- 239. Debts, order in which paid, preference to mortgage.
- 241. Dividend, insufficient estate, funeral expenses.
- 243. Order for payment of creditors, disputed claims.
- 245. Executor liable after decree for payment.
- 246. Claims not included in order for payment.
- 447. Payment of legacies and distribution, final account.
- 449. Proceedings on neglect to render.

Sec. 215. No executor or administrator shall be chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Sec. 216. Every executor or administrator shall be chargeable in his account with the whole of the estate of the deceased, which may come to his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Sec. 217. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall sell any part of the estate for more than the appraisement, and if any shall be sold for less than the appraisement, he shall not be responsible for the loss, if the sale has been justly made.

Sec. 218. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected without his fault.

Sec. 219. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services such fees as the law provides; but when the deceased shall, by his will, make some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instru-

ment, filed in the probate court, renounce all claim for compensation provided by the will.

SEC. 220. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid.

SEC. 221. When no compensation shall have been provided by the will, or the executor shall renounce all claim thereto, he shall be allowed compensation upon the amount of the whole estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent.; for all above that sum, and not exceeding ten thousand dollars, at the rate of five per cent.; for all above that sum at the rate of four per cent., and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the probate judge may deem just and reasonable for any extraordinary service not required by an executor or administrator in the common course of his duty: *Provided*, The total amount of such allowances shall not exceed the amount of commission allowed by this section.

SEC. 222. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon his own motion or upon the application of any person interested in the estate, the executor or administrator shall render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

SEC. 223. If the executor or administrator fail to render an exhibit at the third term of the court, it shall be the duty of the judge to cause a citation to be issued requiring him to appear and render it.

SEC. 224. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts, showing that it is necessary and proper that such an exhibit should be made.

SEC. 225. If the judge be satisfied, either from the oath of the applicant, or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which

shall be during a term of the court, and render an exhibit as prayed for.

SEC. 226. When an exhibit is rendered by an executor or administrator, any person interested may appear, and, by objection, in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of negligence, or has wasted, or embezzled, or mismanaged the estate, his letters shall be revoked.

SEC. 227. If any executor or administrator neglect or refuse to appear and render an exhibit, after having been duly cited, an attachment may be duly issued against him, or his letters may be revoked, in the discretion of the court.

SEC. 228. Every executor or administrator shall render a full account and report of his administration upon the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the court or judge to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation has been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account rendered shall exhibit not only the debts which may have been paid, but also a statement of all debts which have been duly presented and allowed during the period embraced in the account.

SEC. 229. Whenever the authority of an executor or administrator shall cease or be revoked for any reason, he may be cited to account before the probate court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

SEC. 230. If the executor or administrator resides out of the county, or absconds, or conceals himself so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after being committed where the attachment has been executed, his letters shall be revoked.

SEC. 281. In rendering his account the executor or administrator shall produce vouchers for all charges and expenses which he shall have paid, which vouchers shall be filed and remain in the court; and he may be examined on oath, touching such payments, and also touching any property and effects of the deceased, and the disposition thereof. When

any such vouchers shall be required for other purposes, it may be withdrawn on leaving a certified copy on file; if any voucher be lost, or for other good reason the same cannot be produced on settlement, the payment may be proved by the oath of any competent witness.

SEC. 232. On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath positive to the fact of payment, specifying where and to whom the payment was made, and if such oath be uncontradicted; but such allowance, in the whole, shall not exceed five hundred dollars for payment in behalf of any one estate.

SEC. 233. When any account is rendered for settlement, the court or judge shall appoint a day for settlement thereof; the clerk shall thereupon give notice thereof, by causing notices to be posted in at least three public places in the county. The notice shall set forth the name of the estate, and of the executor or administrator, and the day appointed for the settlement of the account, which shall be on some day of a term of court. The court or probate judge may order such further notice to be given as he may deem proper.

SEC. 234. On the day appointed, or any subsequent day to which the hearing may be adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

SEC. 235. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person having an interest might contest it, and who shall be allowed by the court for his services a reasonable compensation. The court shall also, if it deems it necessary, appoint an attorney to represent the absent heirs and devisees. All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown.

SEC. 236. The hearing and allegations of the respective parties may be adjourned from time to time, as shall be necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation, and may allow a reasonable compensation to such referees, to be paid out of the estate of the deceased.

SEC. 237. The settlement of the account, and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate, saving

however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall cease; and, in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

SEC. 238. The account shall not be allowed by the court until it be first proved that the notice has been given as required by this chapter, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

SEC. 239. The debts of the estate shall be paid in the following order: First. Funeral expenses. Second. The expenses of the last sickness. Third. Debts having preference by the laws of the United States. Fourth. Judgments rendered against the deceased in his lifetime, and mortgages in the order of their date. Fifth. All other demands against the estate.

SEC. 240. The preference given in the preceding section to a mortgage, shall only extend to the proceeds of the property mortgaged. If the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

SEC. 241. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

SEC. 242. It shall be the duty of the executor or administrator, as soon as he has sufficient funds in his hands, to pay the funeral expenses, and the expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration, but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed in this act, the payment has been ordered by the court.

SEC. 243. Upon the settlement of the accounts of the executor or administrator, at the end of the year, as required in this chapter, the court shall make an order for the payment of the debts, as the circumstances of the case shall require. If there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid to each creditor. If the whole property of the estate be exhausted by such payment or distribution, such account shall be considered as a final account, and the executor or ad-

ministrator shall be entitled to his discharge, on producing and filing the necessary vouchers and proofs, showing that such payments have been made, and that he has fully complied with the decree of the court.

SEC. 244. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holders would be entitled to if the claim were due, or established, or absolute, shall be paid into the court, where it shall remain, to be paid over to the party when he shall become entitled thereto, or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the estate require: *Provided*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

SEC. 245. Whenever a decree shall be made by the probate court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the district court in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the district court. The executor or administrator shall also be liable on his bond to each creditor.

SEC. 246. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order of payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees, to contribute to the payment of his claim; but if the executor or administrator shall have failed to give notice to the creditors, as prescribed by this act, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed: *Provided*, That this section shall not apply to any creditors whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such day.

SEC. 247. If the whole of the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate, among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reason, the estate be not in a proper condition to

be closed, the court shall give such extension of time as may be reasonable, for a final settlement of the estate.

SEC. 248. At the time designated in the last section, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands for the payment of all debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator shall render a final account and pray a settlement of his administration.

SEC. 249. If he neglect to render his account, the same proceedings may be had, as prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relating to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

X.—PARTITION AND DISTRIBUTION OF ESTATES.

SEC. 250. Petition of heirs, notice of, who may resist.

253. Decree for, where necessary, costs of.

257. Order for payment of bond, action on.

258. Distribution, when made, form of decree.

260. On whose application, of estate in common.

262. Real estate in different counties.

263. Notice necessary, petition for, when filed.

264. Partition, when heirs part with interest.

265. Shares how set out, whole estate may be assigned to one in certain cases.

267. Payments for equalizing.

268. Estate may be sold, and proceeds divided.

269. Of estate in common, guardian for minor.

271. Report may be set aside.

272. When commissioners not necessary.

273. Advancements, agent for absentees, bond of.

276. Unclaimed estate, liability of agent.

278. Certificate to claimant.

279. Decree discharging executor.

280. Letters, etc., may issue after.

SEC. 250. At any time after the lapse of four months after the issuing of letters testamentary or of administration, any heir, devisee, or legatee, may present his petition to the court that the legacy or share of the estate to which he is entitled may be given to him, upon his giving bonds with security for the payment of his proportion of the debts of the estate.

SEC. 251. Notice of the application shall be given to the executor or administrator personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

SEC. 252. The executor or administrator, or any person interested in the estate, may appear and resist the application, or any other heir, devisee, or legatee, may make a similar application for himself.

SEC. 253. If, at the hearing, it appear that the estate is but little indebted, and that the share of the party or parties applying may be allowed to him or them, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: *Provided*, each one of them shall first execute and deliver to the executor or administrator a bond, in such sum as may be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator, conditioned for the payment by the heir, legatee, or devisee, whenever required, of his proportion of the debts due from the estate.

SEC. 254. Such decree may order the executor or administrator to deliver to the heir, legatee or devisee, the whole portion of the estate to which he may be entitled, or only a part thereof.

SEC. 255. If, in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

SEC. 256. The costs of the proceedings authorized by the preceding sections, shall be paid by the applicant, or, if there be more than one, shall be apportioned equally amongst them.

SEC. 257. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why an order shall not be made. At the hearing, the court, if satisfied of the necessity of such payment, shall make an order accordingly, designating the amount, and giving a time within which it shall be paid. If the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

SEC. 258. Upon the final settlement of the accounts of the executor or administrator, (or at any subsequent time, upon

the application of the executor or administrator), or any heir, legatee, or devisee, or the grantee of the heir, legatee, or devisee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled. A statement of the receipts and disbursements of the executor or administrator, since the rendition of his final accounts, shall be reported and filed at the time of making such distribution, unless distribution of the real estate only be made, and a settlement thereof, together with an estimate of the expenses of closing the estate, shall be made by the court, and shall be included in the decree, or the court or judge may order notice of the settlement of such supplementary account, and may refer the same, as in other cases of the settlement of accounts.

SEC. 259. In the decree, the court shall name the persons, and the proportion or parts to which each shall be entitled, and such person shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

SEC. 260. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given, or waived, and proceedings had in the manner provided in sections one hundred and fifty, to and including one hundred and ninety-three, of this act, in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper. If partition be applied for, as hereinafter provided, such decree shall not divest the court of jurisdiction for the purposes of partition, unless the estate be finally closed by the decree of distribution.

SEC. 261. When the estate, real or personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, or when property of the estate shall be held in common and undivided with other parties, partition may be made by three disinterested persons, to be appointed commissioners for that purpose by the court or probate judge, who shall be duly sworn to the faithful discharge of their duties, by any officer authorized to administer oaths. A certified copy of the order of their appointment and of the decree assigning and distributing the estate, shall be issued to them as their warrant, and their oath shall be indorsed thereon. Upon consent of the parties, and when the court shall deem it proper and just, it shall be sufficient to appoint one com-

missioner only, who shall have the same authority and be governed by the same rules as if three were appointed.

SEC. 262. If the real estate shall be in different counties, the probate court may, if it shall judge proper, appoint different commissioners for each county; and, in such cases, the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioner first appointed shall, unless otherwise directed by the probate court, make division of such real estate, wherever situated within this territory.

SEC. 263. Such partition and distribution may be ordered on the petition of any of the persons interested; but before commissioners shall be appointed, or any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested, who shall reside in this territory, or their guardians, and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court shall direct. The petition for partition may be filed at any time before the decree of distribution; and attorneys, guardians and agents may be appointed, and notice given—but the commissioners shall not be appointed until the decree has been made assigning the estate. But when the application is made solely to have partition between the estate administered upon and any other parties, such application may be made and such partition ordered at any time the court may direct.

SEC. 264. Partition of real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be assigned to the person holding the same, in the same manner as they otherwise should have been to such heirs or devisees.

SEC. 265. The several shares in the real and personal estate shall be set out to each individual, in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished, unless two or more of the parties interested shall consent to have their shares set out, so as to be held by them in common and undivided.

SEC. 266. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger: *Provided*, The party accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or shall secure the same to

their satisfaction; or, in case of the minority of such party or parties, then to the satisfaction of his or her guardian; and the true value of the estate shall be ascertained and reported by commissioners.

SEC. 267. When any tract of land, or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections: *Provided*, The party so accepting shall pay or secure to one or more of the others such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 268. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by a commissioner appointed for that purpose, and distribute the proceeds. The sale shall be conducted and reported upon, and confirmed, in the same manner and under the same rules, as in ordinary cases of sales of land by an administrator under this act.

SEC. 269. When a partition of real estate among heirs or devisees shall be required, and such real estate shall be in common, and undivided with the real estate of any other person, the commissioner shall first divide and sever the estate of the deceased from the estate in which it lies in common, and such division so made and established by the probate court, shall be binding upon all the persons interested. Upon application by petition of the heirs, or creditors, or any of them, the probate court may authorize the executor or administrator to bring suit for such partition in the district court. Such suit may also be brought by the executor, when so authorized by the will.

SEC. 270. Before every partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of this territory, or an attorney for all absent heirs and persons interested; and notice shall be given to all parties interested in the partition, their guardians, agents and attorneys, by the commissioners, of the time when they shall proceed to make

partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

SEC. 271. The commissioners shall make report of their proceedings, and of the partition agreed upon by them, to the probate court, in writing, and the court may, for sufficient reasons, set aside such report, and commit the same to the same commissioners, or appoint others; and when such report shall be finally confirmed, a certified copy of partition made thereon, attested by the clerk, under the seal of the court, shall be recorded in the office of the recorder of the county where the lands lie.

SEC. 272. When the probate court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall require that such partition shall be made.

SEC. 273. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning and distributing the estate, and in the warrant to the commissioners, and the final decree of the probate court, shall be binding on all parties interested in the estate.

SEC. 274. When any estate shall be assigned by decree of the court, or distributed by commissioners, as provided in this chapter, to any person resident out of this territory, and having no agent therein, and it shall be necessary that some person be authorized to take possession and charge for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person in the partition and distribution.

SEC. 275. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

SEC. 276. When the estate shall remain in the hands of the agent, unclaimed, for a year, it shall be sold under the order of the court; and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the territorial treasury. When the payment is made, the agent shall

take from the treasury duplicate receipts, one of which he shall file in the office of the territorial auditor, and the other in the probate court.

SEC. 277. The agent shall be liable on his bond for the care and preservation of the estate, while in his hands, and for the payment of the proceeds of the sale, as required by the preceding section, and may be sued thereon by any person interested.

SEC. 278. When any person shall claim the money paid into the treasury, the probate court making the distribution, being first satisfied of his right, shall grant him a certificate, under seal; and upon the presentation of the certificate to the territorial auditor, he shall draw his warrant on the treasurer for the amount.

SEC. 279. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under order of the court, all the property of the estate to the parties entitled, and performed all acts lawfully required of him, the court shall make a decree discharging him from all liability to be incurred thereafter.

SEC. 280. The final settlement of an estate shall not prevent a subsequent issuance of letters testamentary or of administration, with the will annexed, should other property of the estate be discovered, or should it become necessary or proper, from any cause, that letters should be again issued.

XI.—REMOVAL OF EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 281. Suspension of powers of executors, etc.

282. Special administrators, suspension of.

283. Proceedings on, who may appear.

285. Executor absconding.

286. Attachment to compel attendance.

SEC. 281. Whenever the probate judge has reason to believe from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste or embezzle, the property of the estate committed to his charge, or has committed, or is about to commit, a fraud upon the estate, or has been incompetent to act, or has permanently removed from the territory,

or has wrongfully neglected the estate, or has long neglected to perform the necessary acts of such executor, or administrator, it shall be his duty, by an order entered upon the minutes of the court, to suspend the powers of such executor or administrator until the matter can be investigated.

SEC. 282. During the suspension of the powers of the executor or administrator, under the authority of the preceding section, the probate judge or court may, if the condition of the estate requires it, appoint a special administrator to take charge of the effects of the estate, who shall give the bond, and account as other special administrators are required to do.

SEC. 283. When such suspension has been made, notice thereof shall be given to the executor or administrator, and he shall be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court shall be satisfied that there exists cause for his removal, his letters shall be revoked, and letters of administration granted anew, as the case may require.

SEC. 284. At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed. Such allegations shall be heard and determined by the court.

SEC. 285. If the executor or administrator has absconded or concealed himself, or has removed or absented himself from the territory, notice may be given of the pendency of the proceedings, by publication, in such manner as the court may direct; and the court may proceed upon such notice as if the citation had been personally served.

SEC. 286. In the proceedings authorized by the preceding sections of this chapter, for the removal of an executor or administrator, the court may compel his attendance, by attachment, and may compel him to answer questions, on oath, touching his administration; and, upon his refusal so to do, may commit him until he obey, or may revoke his letters or both.

XII.—MISCELLANEOUS PROCEEDINGS.

SEC. 287. Executor may refer claim to referees.

288. Proceedings on reference.

289. Persons interested may contest validity of claim.

290. Orders, etc., to be entered, personal notice, how given.

292. Citation, how served and returned.

- Sec. 294.** Clerk of court, powers of, process.
- 296. Form of practice, taking testimony in other counties.
- 297. Issue of fact, costs.
- 298. Attorney for minors, etc., compensation.
- 299. Decree of homestead to be certified.
- 300. Appeals to district court, when and how taken.
- 302. When cognizable, papers relative to, to clerk district court.
- 304. May be reversed or affirmed.
- 305. Trial by jury, costs of.
- 307. Affirmance, etc., to be certified.
- 308. Appeal to supreme court, when taken, how made.
- 310. Statement of case, reversal or affirmation, costs.
- 313. Appeals when complete.
- 314. Executor, etc., removed, successor of.

SEC. 287. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant, to refer the matter in controversy to some disinterested person or persons to be approved by the probate judge. Upon filing the agreement and approval of the probate judge, in the office of the clerk of the district court for the county in which the letters testamentary, or of administration, were granted, the clerk shall, either in vacation or term, enter a minute of the order referring the matter in controversy to the persons selected; or if the parties consent, a reference may be had in the probate court, and the report of the referees, if confirmed, shall establish or reject the claim the same as if it had been allowed or rejected by the executor or administrator, and the probate judge.

SEC. 288. The referees shall thereupon proceed to hear and determine the matter, and make their report thereon to the court in which the appointment shall have been entered. The same proceedings shall be had in all respects, and the referees shall have the same powers, be entitled to the same compensation, and subject to the same control as in other cases of reference. The court may set aside the referees or appoint others in their place, or may set aside or confirm the report, and adjudge costs as in actions against executors or administrators, and the judgment of the court thereon shall be valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

SEC. 289. Any creditor or other person, interested in the settlement of an estate, may contest the validity or correctness of any claim against such estate, whether the same has been allowed by the executor or administrator, or not, and may require the same to be regularly proved and established in the probate court, in due form of law.

SEC. 290. All orders and decrees made by the probate court, during its terms, shall be entered at length in the minute book of the court; and also all orders which the probate judge is empowered to make out of term-time, and which are, by this act, specially required to be so entered. Upon the close of each term, the judge shall sign the minutes of the proceedings. When any publication is ordered, such publication, shall be made daily, or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this act. The court or judge may, however, prescribe a less number of publications during the period prescribed.

SEC. 291. Whenever personal notice is required by this act, or the act to provide for the appointment, and prescribe the duties of guardians, to be given to any party to a proceeding in the probate court, and no other mode of giving notice is prescribed, it shall be given by citation, issued from the court, signed by the clerk, and under the seal of the court, directed to the sheriff of the proper county, and requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in the citation; or the citation may be addressed directly to the party to be cited, and may be served in like manner as a summons issued from the district court. In the body of the citation shall be briefly stated the nature or character of the proceeding.

SEC. 292. The officer to whom the citation is directed, shall serve it by delivering a copy to the person therein named, or to each of them, if there be more than one, and shall return the original to the court, according to its direction, indorsing thereon the time and manner of service. All proofs of publication, or other mode or modes of giving notice or serving papers, may be made by the affidavit of any person competent to be a witness, which affidavit shall be filed, and shall constitute *prima facie* evidence of such publication or notice of service.

SEC. 293. When no other time is specially prescribed, citation shall be served at least five days before the return day thereof.

SEC. 294. Unless otherwise specially prescribed, the clerk of the probate court shall have power to administer all oaths necessary and proper to be taken, touching any matter pending in the probate court, or in any manner connected with any proceedings of which the court has jurisdiction, and he shall have power to issue citations and subpoenas upon the application of any party, without the order of the judge, except in

those cases in which such order is specially required by law for the issuing of a citation.

SEC. 295. All writs and processes issued from the probate court, shall be signed by the clerk and authenticated with the seal of the court, except subpoenas, notices, and publications, which need not be under seal.

SEC. 296. The practice in the district court shall be applicable to proceedings in the probate court, so far as the same does not conflict with any enactment specially applicable to the probate court, or is not inconsistent with the provisions of this act, or the act to provide for the appointment, and prescribe the duties of guardians. For the purpose of taking the testimony of a witness, or witnesses, in other counties of this territory, or in other states, territories, and countries, a commission may be issued, whenever, in the discretion of the court, or probate judge, the same may be ordered; and when ordered, the formalities attending the issuance, execution, and return thereof, shall be similar to those prescribed in the case of a commission issued from the district court, so far as the same are applicable. When issued *ex parte*, no cross-interrogatories shall be necessary, unless by direction of the court or probate judge; nor shall notice be necessary unless the court or judge shall so order. The court or judge may annex cross-interrogatories, or may refer the matter to a referee, to be by him appointed for that purpose, and when notice is so ordered, the court or judge shall prescribe the mode of giving such notice, whether by personal service, or by posting notices, or by publication.

SEC. 297. All issues of fact shall be disposed of in the same manner as is by law provided upon the trial of issues of fact in the district court. All questions of costs may be determined by the probate court, and execution may issue therefor, in accordance with the order of the probate court.

SEC. 298. When, upon any proceeding in an estate, an attorney has been appointed for minors and absent persons in interest in the estate, such attorney shall represent such parties in any subsequent proceedings had, unless on such subsequent proceedings another person be appointed, and provided, such attorney be present in court in such subsequent proceedings. When any such attorney has been appointed, and when the probate judge has appointed a referee to take proofs, make computation, or perform other service, reasonable compensation may be allowed out of the estate to such attorney and to each referee for the services he may have rendered.

SEC. 299. When a decree is rendered setting apart a home

stead, or making distribution of real estate, or determining any other matter affecting the title to real estate, a certified copy of such decree shall be recorded in the office of the recorder of the county in which the land is situated.

SEC. 300. If any person interested in, or to be affected by, and who shall be aggrieved by any order, allowance, sentence, decree, or denial, of any probate court or judge, or any other act in his official capacity, may appeal therefrom to the district court of the judicial district in which said probate court is held.

SEC. 301. The appeal may be taken within twenty days after the order, allowance, sentence, decree, denial, or any other official act of the probate court or judge, is made and entered in the minutes of the court. It shall be made by filing with the clerk of the probate court a notice, stating the appeal from the order, decree, judgment, sentence or allowance, or some specific part thereof, and by executing an undertaking, in the same manner and to the same effect as upon appeal from the district court to the supreme court.

SEC. 302. Appeals shall be cognizable at the next term of the district court which shall be holden after the expiration of twenty-four days after such appeal shall have been perfected.

SEC. 303. Upon such appeal being perfected, and upon the clerk of said court being paid the fees allowed him by law for the services herein required of him, he shall immediately transmit to the clerk of the district court, under his official seal, a transcript of the record, proceedings and all papers relative to the cause appealed from.

SEC. 304. The court above may reverse or affirm, in whole or in part, the sentence or proceeding appealed from, and may make such decree or order thereon as the judge of the probate court should have made, and shall remit the case to the court from whence it came for further proceedings, unless such reversal or affirmance be appealed from, as hereinafter provided.

SEC. 305. If, upon hearing an appeal in the district court, any question of fact shall occur that is proper for a jury to try, the court shall, upon application, cause it to be tried by a jury upon such issue of fact, to be formed under the direction of the court.

SEC. 306. If the decision be affirmed, the district court shall award costs, to be paid by the party appealing, either personally or out of the estate of the deceased, as he shall direct. If the decision be reversed, costs shall, in like manner, be awarded against the party maintaining the decision of the

probate judge or court, either personally or out of the estate of the deceased.

SEC. 307. Such affirmance, or such reversal, shall be certified to the probate court or judge, whose decision was appealed from, by the district court, with the award of costs made by him. Such probate judge shall enforce the payment of the costs so awarded, in the same manner as if such award had been made by him.

SEC. 308. Any person interested in, or affected by, and aggrieved, by the decision of the district court, affirming, reversing, or modifying the decision, sentence, or order of the probate court or judge, may in all cases where the amount involved exceeds one thousand dollars, exclusive of costs, appeal to the supreme court of this territory.

SEC. 309. The appeal provided for in the preceding section may be taken within twenty days after the order, decree, or judgment is made and entered in the minutes of the court. It shall be made by filing with the clerk of the district court a notice, stating the appeal from the order, decree, or judgment, or some specific part thereof, and by executing an undertaking, or giving surety on such appeal in the same manner, and to the same extent, as upon other appeals to the supreme court from the district court.

SEC. 310. If a party who has the right to appeal to the supreme court, wishes a statement of the case to be annexed to the record, he shall prepare and file the same within five days after the entry of the order, judgment or decree.

SEC. 311. Upon an appeal from the district court, as herein before provided, the appellate court may reverse, affirm, or modify the judgment, order or decree appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and shall certify the same to the district court appealed from.

SEC. 312. When it is not otherwise prescribed by law, the probate court, or the supreme court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the estate, as justice may require. Execution for costs may issue out of the probate court.

SEC. 313. The appeal of an executor or administrator, to the district court, or to the supreme court, as herein provided for, who has given an official bond, shall be complete and effectual without the undertaking, herein before required.

SEC. 314. When an order or decree appointing an executor or administrator, or guardians, shall be reversed on appeal, all lawful acts in administration upon the estate, performed

by such executor, administrator, or guardian, if he shall qualify, shall be as valid as if such order or decree had been affirmed. When any executor or administrator resigns, or is removed, a successor may be appointed, if a necessity therefor exists, without again proving the death and residence of the testator or intestate.

XIII.—DESCENTS AND DISTRIBUTION.

Sec. 315. Descents and distribution.

316. Illegitimate child.

318. Degrees of kindred, how computed.

319. Advancement.

324. Inheritance of husband and wife.

325. By right of representation.

326. Escheated estates.

327. Proceedings to inquire into.

328. Pleadings, title of territory to lands escheated.

330. Territorial auditor to keep account of moneys and land, claims, examination of, legislature to sell.

331. Receiver may be appointed.

332. Compensation of informer, disposition of moneys.

Sec. 315. When any person, having title to any estate not otherwise limited by marriage contract, shall die intestate as to such estate, it shall descend and be distributed, subject to the payment of his or her debts, in the following manner: First. If there be a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child. If there be a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife and the remainder, in equal shares, to his or her children and to the lawful issue of any deceased child, by right of representation. If there be no child of the intestate living at his or her death, the remainder shall go to all of his or her lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share equally; otherwise, they shall take according to the right of representation. Second. If he or she shall leave no issue, the estate shall go in equal shares to the surviving husband or wife and to the intestate's father. (If he or she shall leave no issue, or

husband or wife, the estate shall go to his or her father.) Third. If there be no issue, nor husband, nor wife, nor father, then in equal shares to the brothers and sisters of the intestate, and to the children of any deceased brother or sister, by right of representation: *Provided*, That if he or she shall leave a mother, also, she shall take an equal share with the brothers and sisters. Fourth. If the intestate shall leave no issue, nor husband, nor wife, nor father, and no brother or sister living at his or her death, the estate shall go to his or her mother, to the exclusion of the issue (if any) of deceased brothers or sisters. Fifth. If the intestate shall leave a surviving husband or wife, and no issue, and no father, mother, brother or sister, the whole estate shall go to the surviving husband or wife. Sixth. If the intestate shall leave no issue, nor husband, nor wife, and no father, mother, brother nor sister, the estate shall go to the next of kin in equal degree; excepting that, when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those claiming through an ancestor more remote: *Provided, however*, Seventh. If any person shall die leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die, under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation. Eighth. If, at the death of such child, who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall share the said estate equally; otherwise, they shall take according to the right of representation. Ninth. If the intestate shall leave no husband or wife, nor kindred, the estate shall escheat to the territory, for the support of common schools.

SEC. 316. Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, have acknowledged himself to be the father of such child; and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to

claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, or adopted him into his family; in which case, such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them, intestate and without issue, the others shall inherit his estate, and be heirs, as herein before provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estate of all the said children, as provided herein before, in like manner as if all had been legitimate. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate.

SEC. 317. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother, or, in case of her decease, to her heirs at law.

SEC. 318. The degrees of kindred shall be computed according to the rules of the civil law, and kindred of the half blood shall inherit equally with those of the whole blood, in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors, shall be excluded from such inheritance.

SEC. 319. Any estate, real or personal, that may have been given to the intestate in his lifetime, as an advancement to any child, or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child, or other lineal descendant, toward his share of the estate of the intestate.

SEC. 320. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

SEC. 321. All gifts and grants shall be deemed to have been made in advancement if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such, by the child or other descendant.

SEC. 322. If the value of the estate, so advanced, shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving

it, it shall be considered as of that value, in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given, as nearly as the same can be ascertained.

SEC. 323. If any child, or other lineal descendant, so advanced shall die before the intestate, leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate, and the amount thereof shall be allowed accordingly, by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

SEC. 324. The provisions of this act, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate.

SEC. 325. Inheritance or succession "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

SEC. 326. If any person shall die, or any person who may have died within the limits of what is now the territory of Idaho, seized of any real or personal estate, and leaving no heirs, representatives, or devisees, capable of inheriting or holding the same, and in all cases when there is no owner of such real estate capable of holding the same, such estate shall escheat to and be vested in this territory.

SEC. 327. That whenever the attorney general, United States district attorney, shall be informed, or have reason to believe, that any real estate hath escheated to this territory, by reason that any person hath died seized thereof, and hath left no heirs capable of inheriting the same, or by reason of the incapacity of the devisees to hold the same, or when he shall be informed, or have reason to believe, that any such estate hath otherwise escheated to the territory, it shall be his duty to file an information in behalf of the territory, in the district court of the judicial district in which such estate, or any part thereof, is situated, setting forth a description of the estate, the name of the person last lawfully seized, the name of the terretenant and persons claiming such estate, if known, and the facts and circumstances in consequence of which said estate is claimed to have escheated, and alleging that by reason thereof the territory of Idaho hath right, by law, to such estate; whereupon such court shall award and issue a summons against such person or persons, bodies politic or corporate, alleged in such information to hold, possess, or claim such

estate, requiring them to appear and show cause why such estate should not be vested in the territory, within the time allowed by law in other civil cases; and the court shall make an order, setting forth briefly the contents of said information, and requiring all persons interested in the estate to appear and show cause, if any they have, within thirty days from the date of said order, why the same should not vest in this territory, which order shall be published, at least one month, from the date thereof, in a newspaper published in said district, if one be published therein, and in case no newspaper should be published in said district, by direction of the judge, in some other newspaper in this territory.

SEC. 328. All persons, bodies politic and corporate, named in such information as terretenant, or claimant to the estate, may appear and plead to such proceedings, and may traverse or deny the facts stated in the information, the title of the territory to lands and tenements therein mentioned, at any time on or before the third day of the return day of the summons; and any other person claiming an interest in such estate, may appear and be made a defendant, and plead as aforesaid, by motion for that purpose in open court, within the time allowed for pleading, as aforesaid; and if any person shall appear and plead, as aforesaid, or shall refuse to plead within the time, then judgment shall be rendered that the territory be seized of the lands and tenements in such information claimed. But if any person shall appear and deny the title set up by the territory, or traverse any material fact set forth in the information, or issue or issues shall be made up and tried as other issues of fact, and a survey may be ordered and entered as in other actions when the title or boundary is drawn in question; and if, after the issues are tried, it shall appear from the facts, found or admitted, that the territory hath good title to the land and tenements in the information mentioned, or any part thereof, judgment shall be rendered that the territory be seized thereof, and recover costs of suit against the defendant.

SEC. 329. Any party who shall have appeared to any proceedings, as aforesaid, and the attorney general, United States district attorney, in behalf of the territory, shall, respectively, have the same right to prosecute an appeal or writ of error, upon any judgment as aforesaid, as parties in other cases.

SEC. 330. The auditor of the territory shall keep just and true accounts of all moneys paid into the treasury, all lands vested in the territory, as aforesaid; and if any person shall appear within ten years after the death of the intestate, and claim any moneys paid into the treasury, as aforesaid, as heir or legal representative, such person may file a petition to the

district court in the judicial district in which the seat of government may be, stating the nature of his claim, and praying such money may be paid him. A copy of such petition shall be served on the attorney-general, United States district attorney, at least twenty days before the hearing of said petition, who shall put in answer to the same; and the court thereupon shall examine said claim and the allegations and proofs; and if the court shall find that such person is entitled to any money paid into the territorial treasury, he shall, by an order, direct the territorial auditor to issue his warrant on the treasury for the payment of the same, but without interest or cost to the territory; a copy of which order, under the seal of the court, shall be a sufficient voucher for issuing such warrant. And if any person shall appear and claim land vested in the territory, as aforesaid, within five years after the judgment was rendered, it shall be lawful for such person (other than such as was served with a summons or appeared to the proceeding, their heirs or assigns,) to file in the said district court, in which the lands claimed lie, a petition setting forth the nature of his claim, and praying that the said lands may be relinquished to him; a copy of which petition shall be served on the attorney general, United States district attorney, who shall put in answer; and the court thereupon shall examine said claim, allegations and proofs, and if it shall appear that such person is entitled to such land claimed, the court shall decree accordingly, which shall be effectual for divesting the interest of the territory in or to the lands; but no costs shall be charged to the territory. And all persons who shall fail to appear and file their petition within the time limited, as aforesaid, shall be forever barred; saving, however, infants, married women and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petition, as aforesaid, at any time within five years after their respective disabilities are removed; *Provided, however,* that the legislature may cause such lands to be sold at any time after seizure, in such manner as may be provided by law; in which case the claimants shall be entitled to the proceeds, in lieu of such lands, upon obtaining a decree or order, as aforesaid.

SEC. 331. The said district court, upon the filing of said information and application of the attorney general, United States district attorney, either before or after answer, upon notice to the party or parties claiming such estate, if known, may (sufficient cause therefor being shown) appoint a receiver to take charge and receive the rents and profits of the same, until the title to such real estate shall be finally settled.

SEC. 332. Any person furnishing original information to

the attorney general, United States district attorney, of the escheating of any property to the territory, together with the necessary evidence to sustain the action of the territory in such behalf, shall be entitled to receive, upon the final recovery of such property, five per centum of the property so recovered: *Provided*, That the amount so received by the person or persons furnishing such information shall not in the aggregate exceed the sum of ten thousand dollars in any one case; and *Provided*, That only one person shall be entitled to compensation for such services.

SEC. 333. All moneys which have accrued or may hereafter accrue to this territory from escheated estates, shall be paid into the general fund, and, if need be, used in the defrayment of the current expenses of the government and the redemption of auditor's warrants.

SEC. 334. This act shall take effect from and after its passage.

APPROVED, February 1st, 1864.

REVENUE ACT.

AN ACT to provide a uniform system of Territorial and County Revenue, and for the Assessing and Collecting the same.

- Sec. 1. Territorial and county tax, power to levy.
2. County commissioners to assess, assessment roll.
3. Taxes a lien, property exempt from.
5. Real estate defined, personal, etc.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. An annual *ad valorem* tax of eighty cents upon each one hundred dollars value of taxable property, for territorial purposes, upon the assessed value of all property in this territory, not by this act exempted from from taxation, is hereby levied and directed to be collected and paid ; and upon the same property, the board of commissioners of each county is also hereby authorized and empowered to levey and collect, annually, a tax for county expenditures, not exceeding one hundred cents on each one hundred dollars ; and upon the same property, the board of commissioners of each county is also hereby authorized and empowered to levy and collect annually, such additional and special taxes, as the laws of this territory may authorize, or require them to levy and collect : *Provided, however,* That whenever the board of commissioners levy any tax, they shall cause such levy to be entered on the

record of their proceedings, and shall direct their clerk to deliver a certified copy thereof to the assessor, tax collector, auditor, and treasurer, each of whom shall file said copy in his office.

SEC. 2. The board of county commissioners of each county shall, prior to the first Monday of May, unless otherwise provided by special act, annually assess the amount of taxes that shall be levied for county purposes, designating the number of cents which shall, on each one hundred dollars of taxable property, real or personal, be levied for each purpose; and shall add thereto the amount levied by law on each one hundred dollars of taxable prroperty, real or personal, for either territorial or county purposes. The board of commissioners of the respective counties shall, prior to the first Monday in May of each year, cause to be prepared suitable and well-bound books for the use of the assessor, in which he shall enter his tax list, or assessment roll, as hereinafter provided; said books shall contain suitable printed heads, and be ruled to conform with the form of the assessment roll, as provided in this act.

SEC. 3. Every tax levied under the provisions or authority of this act, is hereby made a lien against the property assessed, which lien shall attach on the first Monday in May in each year, on all property then in this territory, and on all other property whenever it reaches the territory, and shall not be satisfied or removed until the taxes are all paid, or the property has absolutely vested in a purchaser under a sale for taxes.

SEC. 4. All property, of every kind and nature whatever, within this territory shall be subject to taxation, except: First. All land and lots of ground, with buildings, improvements, and structures thereon, belonging to the territory, or any municipal corporation, or to any county of the territory; and all lands belonging to the United States, or to this territory; and all buildings and improvements belonging to the United States, or to this territory. Second. Court houses, jails, town halls, houses occupied by fire and military companies and their apparatus, and other public structures and edifices; and all squares and lots kept open for health or public use, or for ornament, belonging to any county, city, town or village in this territory; public libraries, colleges, school houses, and other buildings for the purpose of education, with their furniture, libraries, and all other equipments, and the lots or lands thereto appurtenant, and used therewith, so long as the same shall be used for that purpose: *Provided*, That when any of the property mentioned in this subdivision is private property, from which a rent or other valuable con-

sideration is received for its use, the same shall be taxed as other property. Third. Public hospitals, asylums, poor houses, and other charitable or benevolent institutions for the relief of the indigent or afflicted, and the lots or lands thereto appurtenant, with all their furniture and equipments; all grounds and buildings belonging to agricultural societies, so long as the same shall be used for that purpose only, and without pecuniary gain. Fourth. Churches, chapels, and other buildings for religious worship, with their furniture and equipments, and the lots of ground appurtenant thereto and used therewith: *Provided*, Rent is not paid for such ground, so long as the same shall be used for such purposes only, without yielding rent. Fifth. The buildings and lots of ground appurtenant thereto, and used therewith, owned and used by the order of Free and Accepted Masons, the Independent order of Odd Fellows, or by any benevolent or charitable society, except such buildings and lots of ground as are owned in connection with individual owners, then only to the extent owned by such orders or societies. Sixth. Cemeteries and graveyards, set apart and used for the purposes of interring the dead. Seventh. The property of widows, or orphan children, not to exceed the amount of one thousand dollars to any one family. Eighth. Growing crops. Ninth. Mining claims: *Provided*, That all machinery used in mining claims, and all property and improvements appurtenant to, or upon, mining claims, which have an independent and separate value, shall be subject to taxation. Tenth. Tools of mechanics, farming tools of husbandmen, libraries of professional men, and private citizens, household furniture of families or householders which do not exceed in value to each, the sum of fifty dollars, and tools of miners which do not exceed in value to each owner, the sum of fifty dollars.

SEC. 5. The term "real estate," whenever used in this act, shall be deemed and taken to mean and include, and it is hereby declared to mean and include the ownership of, or claim to, or possession of, or right of possession to, any land within the territory, and the claim by, or possession of, any person, firm, corporation, association, or company, to any land, shall be listed under the head of real estate; the term "personal property," whenever used in this act, shall be deemed and taken to mean, and it is hereby declared to mean and include all household and kitchen furniture, all law, medical, and miscellaneous libraries, all goods, wares, and merchandise, all chattels, of every kind and description, all money on hand, or on deposit in bank, or banks, or with individuals, all moneys at interest, secured by mortgage, or

otherwise, gold dust, silver bars, bullion, solvent debts, other than those mentioned in this section, when the amount thereof exceeds the indebtedness of the party assessed; stocks of goods on hand; horses, mules, oxen, cows, calves, beef cattle, hogs, sheep, goats, jacks and jennies, and cattle of every description; wagons, carriages, buggies, omnibuses, stages, stage-coaches, sulkies, carts, drays, and all other vehicles, whether for use or pleasure, or hire; all machines and machinery; all works and improvements; all store-ships and hulks; all steamers, vessels, and water craft, of every kind and name, either owned in whole or in part by a resident of the territory, or navigating the waters of any river or lake within the territory, and having a general depot or terminus within the territory; all capital loaned, invested, or employed in any trade, commerce, or business whatever; the capital stock of all corporations, companies, associations, firms, or individuals doing business, or having an office in the territory; the money, property, and effects, of every kind, except real estate, of all banks, banking institutions, or firms, bankers, money lenders, and brokers; all houses, buildings, fences, ditches, structures, erections, or other improvements, built or erected upon any land, whether such land be private property or the property of the territory, or of the United States, or any municipal corporation, or county in the territory; and all property, of whatsoever kind or nature, not included in the term "real estate," as said term is defined in this act.

ASSESSORS, AND THEIR DUTIES.

Sec. 6. Assessor, bond of, may appoint deputies.

8. Vacancy, who to fill, neglect of duty.

—9. Suit against, oaths.

11. When to assess, how to proceed.

13. Property in other county.

14. Partnerships and companies, property of deceased persons.

15. False list, false name, liability of assessor.

18. Tax list alphabetically arranged, form of.

19. When to complete tax list, subsequent assessment.

Sec. 6. Each county assessor, before entering upon the duties of his office shall execute to the people of the United States, in the territory of Idaho, a bond, in the penal sum of three thousand dollars, with two or more sufficient sureties,

to be approved by the probate judge, conditioned for the faithful performance of all the duties of his office, required by law, which bond shall be filed with the clerk of the board of county commissioners, and shall take the oath of office prescribed by law, which shall be indorsed on his certificate of election, or appointment.

SEC. 7. Said assessor shall have the power of appointing one or more deputies, to aid in his official duties, for whose conduct he shall be responsible: *Provided*, That the assessor, before he shall appoint a deputy, or deputies, shall divide the county into convenient districts, of which division notice shall be given to the board of commissioners of said county, and no person shall be appointed a deputy to assess any district, unless he shall be a resident of said district: and *provided further*, that the board of commissioners may fix the number of days for which pay shall be allowed any deputy for assessing a district.

SEC. 8. If any assessor, or deputy assessor, shall be guilty of neglect of any of the duties enjoined on him by law, he shall be liable to indictment in any court of competent jurisdiction, and fined in any sum not exceeding five hundred dollars.

SEC. 9. Suit may be instituted on the assessor's bond, in the manner prescribed by law, for the benefit of any person who may be aggrieved by the wrongful act, or conduct, of such assessor, or his deputy.

SEC. 10. The assessor, and his deputies, are hereby authorized to administer all oaths and affirmations contemplated by law, in the discharge of their duties as such assessors.

SEC. 11. Between the first Monday in May and the first Monday in August in each year, the county assessors, except otherwise required by special enactment, shall ascertain by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also all persons, corporations, associations, companies, or firms, owning, claiming, or having the possession or control thereof, and he shall then determine the full cash value of all such property, and shall list and assess the same to the person, firm, corporation, association, or company owning or having the possession, charge or control thereof. For the purpose of enabling the assessor to make such assessment, he shall demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation, association, or company within his county, a statement, under oath or affirmation, of all the real estate or personal property within the county, owned, claimed by, or in the

possession or control of such person, firm, corporation association, or company. If any person, officer, or agent shall neglect or refuse, on demand of the assessor, or his deputy, to give, under oath or affirmation, the statement required by this section, the assessor shall make an estimate of the value of the taxable property which such person, officer, or agent neglected or refused to render under oath or affirmation, and the value so fixed by the assessor shall not be reduced by the board of equalization. If the owner of any property, not listed by another person, shall be absent, or unknown, the assessor shall make an estimate of the value of such property. If the name of the absent owner is known to the assessor, the property shall be assessed in his, her, or their name; if unknown to the assessor, the property shall be assessed to "unknown owners."

SEC. 12. At the same time, and in the same manner, as the other lists of property herein required are given, each and every person shall deliver, under oath or affirmation, to the assessor a similar list of all the real estate, with the improvements thereon, if any, and other personal property which he, and the firm of which he is a member, and the corporation, association, or company of which he is president, cashier, treasurer, secretary, trustee, or managing agent owns, claims, or has charge, possession, or control of in any other county of the territory, which he does not, of his personal knowledge, know has been assessed in such other county for that year, which list shall particularly describe each tract of land, and each city or town lot contained therein, so that the same may be found and known by such description, and all vessels, steamers, and other water craft, and shall also specify each and all deposits, if any, and persons with whom such deposit or deposits are made, and the place, or places, in which the same may be found, unless he shall have included all such money, gold dust, silver bars, and bullion in the list of property in his county, which it shall be lawful to do; and shall also specify the kind and nature of all other personal property in such county, belonging to, or under the charge, control, or in the possession of him or them.

SEC. 13. Every assessor, as soon as he shall have received a list of any property in another county, under the foregoing section, shall make out, from the lists delivered to him, a list for each county in which any taxable property may be, and shall transmit the same by mail, or express, to the assessor of the proper county, who shall assess the same as other taxable property therein, if it has not been before assessed for the same year.

SEC. 14. The owner or holder of any stock in any firm, incorporated company, or association, the entire capital of which is invested in property which is assessed, or the capital of which is assessed, shall not be assessed individually for his stock in such company or association; nor shall any person having an interest in any partnership or firm, be individually assessed for the partnership or firm property, if such property is assessed to the partnership or firm. The property of every firm, incorporated company, or association, shall be taxed in the county where the property is situated: *Provided, That* whenever any portion of the property of any such company shall be assessed and taxed in the county wherein the same is located, then, upon presentation, at the principal office of such company of the certificate or receipt of the tax collector of said county, that such taxes have been paid in another county, the same shall be deducted at the principal office from the aggregate amount of taxes imposed upon, or paid by, said company for the same property in the county wherein the principal office of the said company is situated. The individual property of deceased persons may be listed for the heirs, guardians, executors, or administrators, as the case may be, and a payment of taxes made by either shall bind all parties in interest for their equal proportions. It is hereby made the duty of every probate judge, from time to time, to direct each and every administrator and executor (which direction may be specially given in each case, or by general order) to pay out of the funds of the estate all taxes that have attached, or accrued, against such estate, after the passage of this act; and no order or decree for the distribution of any property of any decedent among the heirs, or devisees, shall be made until all taxes which have been attached to, or accrued against, the estate shall have been paid.

SEC. 15. If any person shall wilfully make, or give, under oath, or affirmation, a false list of his, her, or their, taxable property, or a false list of taxable property under his, her, or their control, such person shall be deemed guilty of perjury, and, upon conviction thereof, shall be punished therefor, as is by law provided for the punishment of perjury.

SEC. 16. If any person shall give the assessor, or his deputy, a false name, or shall refuse to give his or her name, or shall refuse to give a list of property, as is by this act required, or shall refuse to swear, or affirm, to such list, he or she shall be guilty of misdemeanor, and shall be arrested upon complaint of the assessor, or his deputy, and, upon conviction before a justice of the peace, he or she shall be punished by a fine of not less than ten dollars, nor more than five hundred dol-

lars, or by imprisonment for a term of not less than two days, nor more than three months, or by both such fine and imprisonment.

SEC. 17. The assessor and his sureties shall be, and they are hereby, made liable for the taxes on all taxable property within the county, which is not assessed through his wilful neglect; and if any non-assessment was caused by the refusal of the owner, agent, or claimant of such property, or of the person or persons, having it in possession, or under his or their control or charge, to give a list of it to the assessor, the assessor shall not be liable, but the person or persons whose refusal to give the assessor a list caused the omission, shall pay double the taxes imposed upon property regularly taxed.

SEC. 18. It shall be the duty of the assessor to prepare a tax list or assessment roll, alphabetically arranged in the book or books furnished him by the board of commissioners for that purpose, in which book or books, shall be listed or assessed, all the real estate, improvements on real estate, improvements on public lands, and other personal property within the limits of the county; and in said book or books, he shall set down in separate columns: First. The names of the taxable inhabitants, firms, incorporated companies, or associations, in alphabetical order if known; if unknown, the property shall be assessed to "unknown owners"; and if any person shall refuse to make a statement of his property, under oath, as required by this act, that fact shall be noted under his name. Second. All real estate and improvements taxable to each inhabitant, firm, incorporated company, or association, described by metes and bounds, or by common designation, or name; if situate within the limits of any city, or incorporated town, described by lots, or fractions of lots; if without said limits, giving the number of acres, as nearly as can be conveniently ascertained, and the location and township where situate; all improvements on public lands, describing, as nearly as possible, the location of such improvements: *Provided*, That when two or more parties claim, or give a description of the same land, it shall be assessed to each party making such claim, or giving such description, according to the estimated value of the claims each. Third. The cash value of real estate, and the improvements thereon. Fourth. The cash value of all improvements on real estate where the same is assessed to a person other than the owner of said real estate. Fifth. The cash value of all personal property, except improvements on real estate, or public lands, taxable to each. Sixth. The total value of all property taxable to each; and no further description of personal property than that required

by the foregoing provisions of this section, shall be needed, or be requisite, to render the assessment binding and effective. Seventh. The form of the assessment roll shall be substantially as follows:

Assessment of property for the fiscal year ending _____ to all owners and claimants known and unknown.

Total value.....	\$
Military enrollment.....	
Poll tax.....	\$
Value of personal property	\$
Value of improvements on real estate assessed to persons other than the owners of said real estate.	\$
Value of land and improvements.	\$
Number of acres.....	
Range.....	
Township.....	
Section.....	
Block.....	
Lot.....	
Description of property....	
Tax payers' names.....	

The assessor shall, also, in a book, make a map or plan, of the various blocks within any incorporated city or town, and shall mark thereon the various subdivisions as they are assessed, and in each subdivision he shall mark the names of the persons to whom it is assessed.

SEC. 19. On or before the first Monday in August, in each year, the assessor shall complete his tax list, or assessment roll, and shall attach his certificate thereto, and deliver it, and the map book, and all of the original lists of property given to him, to the clerk of the board of commissioners; and as soon as he receives said assessment roll, the clerk of the board of commissioners shall give notice of the fact, specifying therein the time of meeting of the board of equalization, by publication in one newspaper, if there be one published in the county, and if none, then in such manner as the board of commissioners shall direct; and he shall keep the roll open in his office, for public inspection.

SEC. 20. It shall be lawful for the assessor, at any time subsequent to the first Monday in August, and prior to the last Saturday in September, in each year, to assess any property which shall not be on the regular list; and he shall enter such assessment in a separate portion of the tax list, or assess-

ment roll, under the head of "subsequent assessments," and shall deliver a true copy of the original assessment to the county auditor, to be by him compared with the entries on the assessment roll, and the same shall be filed with the clerk of the board of commissioners.

BOARD OF EQUALIZATION.

Sec. 21. Equalization, meeting of board.

22. Duplicate assessment roll.

SEC. 21. The commissioners of the county shall constitute a board of equalization, of which board the clerk of the board of commissioners shall be clerk. The board of equalization shall meet on the second Monday in August, and shall continue in session from time to time, until the business of equalization presented to them is disposed of: *Provided, however,* That they shall not sit after the first Monday in September, except as in this section provided. The board of equalization shall have power to determine all complaints made in regard to the assessed value of any property, and may change and correct any valuation, either by adding thereto, or deducting therefrom, if they deem the sum fixed in the assessment roll too small, or too great, whether said sum was fixed by the owner or assessor; except that in the cases where the person complaining of the assessment has refused to give the assessor his list, under oath, as required by this act, no reduction shall be made by the board of equalization in the assessment made by the assessor; and if the board of equalization shall find it necessary to add to the assessed valuation of any property on the assessment roll, they shall direct their clerk to give notice to the person interested, by letter deposited in the post office, express, or otherwise, naming the day when they shall act in that case, and allowing a reasonable time to appear. As soon as possible after the adjournment of the board of equalization in September, its clerk shall make out a list of all persons, the valuation of whose property has been added to, with the amounts so added on the assessment roll, who have not appeared before the board, and a list of all property, the valuation of which has been added to on the assessment roll, with the amounts so added, the owners of which have not appeared before the board, and the board of commissioners shall cause the same to be published in one newspaper in the county, if

there be any, and if not, then by posting one copy of the same in a public and conspicuous place in each election precinct in the county; and any person to the assessed value of whose property there was an amount so added, not appearing before the board of equalization in August, may appear before the board in October, and upon making affidavit that he had no knowledge of such increased valuation of his property, he shall have a hearing before the board of equalization, and the determination then had shall be final; and the clerk of the board of equalization shall note all changes made, and report the same to the auditor, who shall make the changes required on the original assessment roll, and the auditor shall, in the next regular statement to the auditor of the territory, report such changes in such statement. During the session of the board of equalization, the assessor shall be present, and also any deputy whose testimony may be required by the parties appealing to the board, and they shall have the right to make any statement touching such assessment, and producing evidence relating to the questions before the board. And the recorder of the county shall also be present, and attend on the board of equalization with an abstract of all unsatisfied mortgages and liens remaining on record in his office, arranged in alphabetical order, for which service he shall receive no compensation; and the board of equalization shall make use of such abstract, and all other information they can gain from the records in the recorder's office, or otherwise, in equalizing the assessment roll of the county, and may require the assessor to enter upon such assessment roll any such mortgage, or lien, or other property, which has not been assessed; and the assessment and equalization so made, shall have the same force and effect as if made by the assessor before the delivery of the assessment roll by him to the clerk of the board of equalization. A quorum of the board of commissioners shall be sufficient to constitute the board of equalization, and a majority of the members present shall determine the action of the board. On the first Saturday in October, the board of commissioners shall meet as a board of equalization, to equalize the subsequent assessment roll, and hear complaints in the excepted cases in this section.

SEC. 22. During the session, or as soon as possible after the adjournment of the board of equalization, its clerk shall enter upon the assessment roll all the changes and corrections made by the board, and thereupon deliver the assessment roll, so corrected, to the county auditor, whose duty it shall be to add up the columns of valuation, and enter the total valuation of each description of property on the roll; and, on or before

the second Monday in September, as to the original assessment roll, and on or before the second Saturday in October as to the subsequent assessment roll, he shall deliver a true copy of the corrected roll, to be styled a "duplicate assessment roll," with territorial, county, and other taxes, and totals of taxes, to each person, carried out in separate money columns, with his certificate thereto attached, and also the map or plat book, to the tax collector.

TAX COLLECTOR AND HIS DUTIES.

Sec. 23. Bond of tax collectors, may appoint deputies.

25. Penalty for wilful neglect of duty.

26. Duties of tax collector defined.

27. When to return tax list.

28. Collector shall give notice, shall receipt to tax payer.

31. When tax collector to pay to treasurer.

32. Liability of tax collector.

33. Delinquent tax list.

34. Notice of delinquent list.

35. Actions against delinquents, form of.

40. Judgment, effect of, etc.

41. Laws applicable to this act.

42. Compensation of officers, district attorney, fees of.

43. Attorney to pay money to treasurer, etc.

44. Liability of district attorney for neglect, etc.

Sec. 23. The county tax collector, before entering upon the duties of his office, shall execute to the people of the United States, in the territory of Idaho, a bond, in the penal sum of three thousand dollars, or in a greater sum, if the board of commissioners of the county require it, with two or more sufficient sureties, to be approved by the probate judge, conditioned for the faithful performance of all the duties of his office, as required by law, said bond shall be filed with the clerk of the board of county commissioners, and shall take the oath of office as prescribed by law, which shall be endorsed on his certificate of election, or appointment: *Provided*, That no bond shall be required in a greater sum than twice the amount of taxes to be collected.

Sec. 24. The tax collector shall have the power of appointing one or more deputies, to aid in his official duties, for whose conduct he shall be responsible.

Sec. 25. If any tax collector, or his deputy, shall wilfully

neglect or refuse to perform any of the duties enjoined on him by the provisions of this act, he shall be guilty of a misdemeanor in office, and on conviction thereof, shall be punished by imprisonment in the county jail, not more than one year, or by a fine of not less than two hundred, nor more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

SEC. 26. The tax collector is hereby authorized and required, (unless otherwise directed by the board of commissioners in the respective counties) either in person or by deputy to accompany the assessor and his deputies through the county: *Provided*, That in the counties where the board of commissioners directs a tax collector not to accompany the assessor, the tax collector shall deputize the assessor to collect poll taxes until such time as the assessment is completed, and upon the entry of any assessment of movable property to any person, firm, corporation, association, or company, who does not own real estate within the county, to demand the payment of the taxes on the same; and if any such person, firm, corporation, association or company, shall neglect or refuse to pay such taxes, the tax collector, or his deputy, shall seize sufficient of the personal property of the party so neglecting or refusing to pay, to satisfy taxes and costs, and shall post a notice of such seizure, with a description of the property, and the time and place where it will be sold, in three public places in the township or district where it is seized, and shall, at the expiration of five days, proceed to sell at public auction, at the time and place mentioned, to the highest bidder for cash, a sufficient quantity of said property to pay the taxes and expenses incurred; and for this service the tax collector shall be allowed, from the delinquent party, a fee of three dollars, and the same mileage a sheriff would be entitled to receive for travelling to the place to make a levy; and upon the payment of the purchase money, he shall deliver to the purchaser the property sold, together with a certificate of the sale, and the amount of taxes or assessments, and expenses thereon, for which the property was sold, whereupon the title to the property so sold shall vest absolutely in the purchaser: *Provided*, That in counties where the tax collector is compensated for his services by a specific salary, he may appoint the deputies required by this section, and be paid for his services for collecting revenue under this section for his own use, as in this act provided.

SEC. 27. The tax collector shall, on the first Monday of each month, return to the auditor a list of all collections made under the preceding section, and it shall be the duty of the

auditor to mark the word "paid" on the original or subsequent assessment roll, opposite the name of each party whose taxes are so paid, as soon as the same shall have been delivered to him.

SEC. 28. Upon receiving the duplicate assessment roll from the auditor, the tax collector shall proceed to collect the taxes, and shall forthwith give notice, by publication in one newspaper, if there be any published in his county, and if none be published, then by posting notices in three public and conspicuous places in the county, that the territorial and county taxes are due and payable, and that the laws in regard to their collection will be strictly enforced.

SEC. 29. Whenever any taxes are paid to the tax collector he shall mark the word "paid," and the date of payment, in the duplicate assessment roll, opposite the name of the person, or description of the property, liable for such taxes, and shall give a receipt therefor, specifying the amount of the assessment, the amount of the tax, and a description of the property assessed; but no tax collector shall receive any taxes on real estate, for any portion less than the least subdivision entered on the assessment roll: *Provided always*, That an owner of undivided real estate may pay the proportion of taxes due on his interest therein.

SEC. 30. On the second Monday of November in each year, the tax collector shall, at the close of his official business on that day, enter upon the duplicate assessment roll a statement that he has made a levy upon all the property therein assessed, the taxes upon which had not been paid, and shall immediately ascertain the total amount of taxes then delinquent, and file in the office of the auditor a statement of said amount, verified by the oath of himself, or deputy, and shall proceed to make out and file in the office of the auditor a list of all persons and property then owing any taxes, verified by the oath of himself, or deputy, which list shall be completed by the third Monday in November and shall be known as the "delinquent list;" and to enable the tax collector to make out said list, no taxes shall be received by him on the duplicate assessment roll, after making the entry provided for it in this section.

SEC. 31. The tax collector shall, on the first Monday in each month, pay to the county treasurer all money in his hands belonging to, or collected for the use of the territory, or county; and shall on the same day, present to the auditor the treasurer's receipt for said money, and shall at the same time, deliver to the auditor, under oath, a true and correct account of all his transactions and receipts since his last settlement as

collector of territorial and county taxes; and shall also state, under oath or affirmation, that all the money collected by him as tax collector has been paid, which account and statement shall be filed in the office of the auditor. On the first Monday in December in each year, the tax collector shall attend at the office of the county auditor, with his duplicate assessment roll, and the auditor and tax collector shall then carefully compare the said duplicate assessment roll with the original, marking on the original roll the word "paid" opposite the name of each person whose taxes have been paid, or opposite the description of the property upon which taxes have been paid; and the auditor shall then and there administer to the tax collector an oath, which shall be written and subscribed on the original and duplicate assessment roll, to the effect that each person, and all property assessed in said roll, on which taxes have been paid, has the word "paid" marked opposite the name of such person, or the description of such property; and the auditor shall then foot up the amount of taxes remaining unpaid, and credit the tax collector with the amount, and shall make a final settlement with the tax collector, of all taxes charged against him on account of said assessment roll. Within ten days after such final settlement, the auditor shall transmit, by mail or otherwise, to the auditor of the territory a statement, in such form as the territorial auditor may require, of all, and of each particular kind of property delinquent, and of the total amount of delinquent taxes. For the services required by this section, the tax collector shall receive no fee or compensation whatever.

SEC. 32. If any tax collector shall refuse, for a period of five days, or wilfully neglect to make the payments and settlements with the treasurer and auditor of his county, as in this act specified, he and his sureties shall be held liable to pay the full amount of taxes charged upon the assessment roll; and the district attorney, on his own volition, or being instructed to do so by the territorial auditor, or by the probate court, or board of commissioners of the county, shall cause suit to be brought against such tax collector and his sureties, for the full amount due on the auditor's books; and if any such suit is commenced, no credit or allowance whatever shall be made to such refusing or neglecting tax collector, for the delinquent taxes outstanding.

SEC. 33. At any time after the fourth Monday of November and before the institution of suit, as herein provided, any delinquent tax payer may, upon a certificate from the auditor (giving a description of the property, and the taxes due thereon), pay to the county treasurer the taxes assessed

against said delinquent, with ten per cent. additional thereon, taking from the treasurer duplicate receipts for the amount paid, one of which receipts shall be filed with the county auditor, the other with the district attorney of the county. After having been served, by any person, with a duplicate receipt of the county treasurer, for the total amount of taxes due from such person, or upon a piece of property, with ten per cent. thereon additional, the district attorney shall not commence the suit authorized by this act against such person or property; *Provided*, That if any person shall fail to serve said receipts, such person shall pay all costs that may result from his or her negligence. The additional ten per cent. provided for by this section, shall be paid into the county treasury for the use of the county.

SEC. 34. The auditor shall, within five days after receiving such delinquent list, deliver the same to the district attorney of his county, duly certified by him, and shall at the same time publish a notice in some newspaper printed in said county, if there be any, and if not, then by posting notices in three public places in said county, that said delinquent list has been so deposited with the district attorney, and that unless the delinquent taxes therein specified are paid to the county treasurer within twenty days from the publication or posting of such notice, action will be commenced by said attorney for the collection of such taxes and costs. Said auditor shall make, or procure, and file with the district attorney immediately, an affidavit, stating the contents of said notice, and the manner and time of such publication or posting, as required in this section. The district attorney, before receiving the delinquent list, as provided in this section, shall enter into such additional bond as may be required by the board of commissioners.

SEC. 35. The district attorneys of the several districts of this territory are hereby authorized and directed, immediately after the expiration of the time specified in section thirty-four of this act, to commence actions in the name of the people of the United States and Idaho territory, against the persons so delinquent, and against the real estate and improvements assessed so delinquent, and against all owners or claimants to the same, known or unknown. Such actions may be commenced in the county where such assessment is made, before any justice of the peace or court in said county having jurisdiction thereof; and such jurisdiction shall be determined solely by the amount of delinquent tax sued for, not regarding the location of the land as to the township or

district, nor residence of the person, as to town, township, district, county, or territory.

SEC. 36. The complaint in said action may be as follows:

Territory of Idaho, }
County of ———. }

The people of the United States and }
Territory of Idaho, }
v. } [Title of the Court.]
[A. B. & Co.] and the real estate and im- }
provements in [describing them] }

The people of the United States and Territory of Idaho, by [X. Y.] district attorney of the district of ——— complain of [A. B.] ———, and also the following real estate, and improvements [describing them with the same particularity as in actions of ejectment, or actions for the recovery of personal property] and for cause of action, say:

That, between the first Monday in ——— and the first Monday of ——— A. D. 18—, in the county of ——— in the Territory of Idaho, [O. P.,] then and there being county assessor of said county, did duly assess, and put down upon an assessment roll all the property, real and personal, in said county, subject to taxation; and that the said assessment roll was afterwards submitted to the board of equalization of said county, and was by the said board duly equalized, as provided by law; that said [A. B.] was then and there owner of, and that there was duly assessed to him, the above described real estate, improvements upon real estate, and certain personal property; and that upon such property there has been duly levied, for the fiscal year, A. D. 18—, a Territorial tax of ——— dollars, and a county tax of ——— dollars, amounting in the whole to ——— dollars, all of which is due and unpaid, of which amount ——— dollars was duly assessed and levied against the real estate, and ——— dollars against the improvements aforesaid.

Wherefore, said plaintiffs pray judgment against [A. B.] for the sum of ——— dollars (the whole of said tax), and separate judgment against said real estate and improvements for the sum of ——— dollars (the tax thereon), and for such other judgment as to justice belongs, and for all costs subsequent to the assessment of said taxes, and of this action.

[X. Y.,] District Attorney, District of ———.

Provided, That if the property be assessed to an unknown owner, then any fictitious name may be inserted to represent such owner as defendant.

Sec. 37. Upon filing the complaint in a district court, or before a justice of the peace, a summons shall be issued as is provided in civil cases, and shall be served by delivering a copy thereof to each defendant named; and as to said real estate or improvements, by delivering a copy thereof to the person or persons in possession of the same; and further, as to all real estate, by posting a like copy in some public place thereon: *Provided*, That if the personal defendant cannot be found in the county in which said action is brought, then service may be made upon such defendant by posting a copy of the summons, for twenty days, at the court house door of said county.

Sec. 38. The defendant may answer, which answer shall be verified: First. That the taxes have been paid before suit. Second. That the taxes, with costs, have been paid since suit; or, that such property is exempt from taxation under the provisions of section four of this act. Third. Denying all claim, title, or interest in the property assessed, at the time of the assessment. Fourth. Fraud in the assessment, or fraud in failing or neglecting to comply with the provisions of this act, by which fraud the party, or property, assessed has suffered injury; *Provided, however*, That the acts herein required, between the assessment and the commencement of suit, shall be deemed directory merely; and no other answer shall be permitted.

Sec. 39. Said delinquent list, or copy thereof, certified by the county auditor, showing unpaid taxes against any person or property, shall be *prima facie* evidence in any court, to prove the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

Sec. 40. In case judgment is rendered for the defendant, it shall be general, without costs, and may be entered in favor of some one, or more, of them, and against others, as in other civil cases; in case judgment is for the plaintiffs, it shall be entered against such defendant as is found liable to the tax, and for such amount, or portion thereof, as he or they, shall be so adjudged liable: *Provided*, That no personal judgment shall be rendered unless the person against whom it is rendered shall have been personally served with the summons, or shall have appeared in said action; judgment may also be rendered for want of an answer, as in other cases. Judgment may be entered against the real estate and improvements, severally, for the taxes severally assessed and levied thereon, and when it shall appear upon the assessment roll, and not be

disproved upon trial, that the real estate and improvements belong to the same person or persons, then judgment may be rendered against said real estate and improvements jointly, for the whole taxes thereon, or such part thereof as may be adjudged. Such judgments, rendered in the district court, shall be docketed and become liens upon all the property against which judgment is rendered, from the date of such assessment, and against all other real estate of the person assessed, subject to execution for the amount of any judgment against him, from the time of such docketing, as in other civil cases; and the district attorney may file transcripts of judgments rendered in justices' courts under this act, with the county clerk, who shall thereupon docket such judgments, and they shall become liens from and after such docket entry, in like manner as judgments rendered in a district court, under this act: *Provided, however,* That when the lien attaches against the property owing the taxes, such lien shall not be released until the delinquent taxes are paid thereon, and the county clerk may issue execution on such justices' judgments as on judgments rendered in the district court. In case any person shall be sued for taxes on any land, or improvements, of which he was the owner, or in which he had a claim or interest, at the institution of the suit, and shall be discharged from personal liability under an answer, in conformity with the third subdivision of section thirty-eight, and such lands or improvements shall be sold under a judgment obtained against it, and shall thereafter be redeemed by such discharged defendant; or, if he shall pay the taxes and costs, to prevent a sale, then such personally discharged defendant shall have, and is hereby given the right of recovery, over against the owner at the time of the assessment, for the full sum of taxes and costs, or redemption money paid; and in every case of such recovery, the judgment shall, in addition to the taxes and costs, or in addition to the redemption money paid, include twenty-five per cent. of the amount of taxes and costs, or redemption money, as liquidated damages, and the receipt of the district attorney, for taxes and costs, or of the sheriff, for the redemption money, shall be sufficient evidence of the debt, and of its amount.

SEC. 41. An act to regulate proceedings in civil cases, in courts of justice in this territory, and the several amendments thereto, so far as the same are not inconsistent with the provisions of this act, are hereby made applicable to proceedings under this act; and any deed derived from a sale of real property under this act, shall be conclusive evidence of title, except as against actual frauds, or pre-payment of the taxes by

one not a party to the action, or judgment in, or upon which such sale was made, and shall entitle the holder thereof to a writ from the district court to obtain possession of such property; *Provided*, That the sheriff in selling said property, shall only sell the smallest quantity that any purchaser will take and pay the judgment and all costs; and, *Provided, further*, That when property sold, belonging to minors, or persons under legal disability, they shall have until six months, after such disability is removed, to redeem said property, by paying the whole amount of the judgment, and all subsequent taxes and interest, paid by and due to the purchaser at said sale; but this provision shall not apply when the executor or administrator of the estate, or the father, or in case of his death, the mother or guardian of such minor children, has been personally served with process; and, *Provided, further*, That the real estate so sold for taxes may be redeemed from such sale, as in case of sale upon execution, as provided in other civil cases, by paying to the sheriff the total amount of the judgment, and all costs with thirty per cent. thereon; and, *Provided, further*, That if the same is paid within three months, from the date of the certificate of sale, it shall be for the total amount of the judgment, and all costs with fifteen per cent. thereon. All moneys collected under this act, except costs and charges, shall, without delay, be paid to the treasurer of the county, to be distributed to the proper funds; and each collection, and the date thereof, shall be entered opposite the proper name, or property, in the delinquent tax list, which shall be open to public inspection:

SEC. 42. There shall be allowed to all officers, except district attorneys, the fees allowed in other civil cases. The district attorneys shall be allowed a compensation equivalent to five per cent. on the amount of taxes due, to be added thereto, if paid after suit brought and before judgment, and if not so paid, then ten per cent. to be taxed as other costs in the case. All officers shall perform such services as may be required of them under this act, without the payment of fees in advance. All costs shall be taxed and entered in the judgment against the person, and the real estate and improvements, when the judgment is the same against all; or, if the judgment against the person and property, are for different sums, then the costs may be appropriated by the court, as the same may be deemed just; *Provided*, That no fees or costs shall be paid to any officer, or district attorney, unless the same be collected from the defendants: *Provided*, That in counties where the officers receive a specific salary, the fees provided in this section shall be received by them for their own use.

SEC. 43. The district attorney shall, on the receipt of any money for taxes, enter the same on his delinquent list, opposite the name of the person delinquent, or opposite the description of property, and shall, on the first Monday in each month, after the time fixed in this act for the commencement of actions against delinquent tax payers, pay to the county treasurer all moneys collected by him for taxes, taking duplicate receipts for the amount so paid; one of which receipts he shall, on the same day, file with the auditor, and shall, at the same time, file with said auditor a list of all judgments obtained by him up to that date, for taxes under the provisions of this act, stating therein the names of the defendants, if known, or, if unknown, a description of the property, the amount of each judgment, and the name of the court, or justice, in which, or before whom said judgment was obtained. He shall on the Saturday next preceding the first Monday in May in each year, pay to the county treasurer all moneys received by him for taxes, and not previously paid over, taking duplicate receipts therefor, one of which shall, in like manner, be filed with the auditor; and shall at the same time, file with the auditor a list of all judgments obtained by him and not previously filed, as herein provided. He shall also, on the day last mentioned, make and file with the county auditor an affidavit, stating that he has paid to the county treasurer all moneys collected by him for taxes prior to that date, and filed the receipts therefor, and that the several lists filed by him, as herein directed, contain all judgments obtained by him under the provisions of this act. On the first Monday in November in each year, the district attorney shall attend at the office of the county auditor with the delinquent list or lists, and the auditor shall then carefully compare the same with the treasurer's receipts and statements filed by the district attorney, and if the same shall have been found to be correct, the auditor shall give to the district attorney a receipt specifying the same. The district attorney shall, at the same time, deliver to the auditor a written statement of all delinquent taxes upon said delinquent list or lists remaining uncollected, or for which suit has been brought, with his reasons in detail for not being able to collect the same, or for not bringing suit; and the auditor shall immediately file the said delinquent list or lists, and statement with the clerk of the board of equalization, and the board of equalization shall revise the same, by striking off such taxes as cannot be collected; the delinquent list or lists, shall then be returned to the auditor, who shall note the changes made, and shall then return the same to the district attorney. The county

auditor shall, in his next report to the territorial auditor, state the amount stricken off the delinquent list or lists, by the board of equalization.

SEC. 44. If any district attorney shall fail, or refuse to pay to the county treasurer, as provided in this act, any money collected by him for taxes, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or by imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment.

COUNTY AUDITOR, HIS DUTIES.

SEC. 45. County auditor, duties of.

46. Penalty for neglect of duty.

50. Printed license forms prepared by auditor for collector.

51. Auditor to report to territorial auditor.

SEC. 45. The county auditor shall, before he enters upon the duties of his office, execute two bonds, with sufficient sureties, to the people of the United States and Idaho territory, one for the sum of two thousand dollars, or such greater sum as the board of commissioners may require, which shall be approved by the probate judge, and filed in the office of the territorial auditor, and the other for the penal sum of two thousand dollars, or such greater sum as the board of commissioners may require, to be approved by the probate judge, and filed in the office of the probate clerk, which bonds shall be conditioned for the faithful performance of all the duties of his office, as required by law.

SEC. 46. If any county auditor shall, by himself or deputy, neglect or refuse to perform the duties enjoined on him by the provisions of this act, he shall be guilty of a misdemeanor in office, and on conviction thereof, shall be punished by imprisonment in the territorial prison, for not more than one year, or by a fine of not less than two hundred, nor more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

SEC. 47. On delivering the certified copy of the assessment roll to the tax collector, the auditor shall charge the tax collector with the full amount of the taxes levied, and shall forthwith transmit by mail, to the territorial auditor, a statement

of the amount so charged, and shall also, at the same time, transmit to the territorial auditor a statement of the number of poll tax receipts delivered to the tax collector, and the number of said receipts returned to him on settlement, which said returned receipts he shall forward to the auditor, by such conveyance as the territorial auditor, either by general or special order, may direct, and shall at the same time, make out and transmit by mail, a statement of all territorial and county licenses issued in the county since his last settlement in regard thereto, giving the number and aggregate amount of each kind of licenses issued.

SEC. 48. All statements which this act requires the auditor to make, shall be made under oath.

SEC. 49. The auditor shall, from time to time, upon presentation to him of the receipt from the county treasurer, for moneys collected and paid over by the tax collector, credit him with the amount thereof, and shall, at the time required by law for the return of the delinquent list in each year, credit him with the amount of taxes then delinquent, and in case the tax list is transferred from one tax collector to another, he shall credit the one and charge the other with the amount then outstanding on the tax list, which amount shall be ascertained jointly by the outgoing and incoming tax collectors at their own cost, without any expense to the territory or county.

SEC. 50. The auditor shall prepare printed forms for all licenses, the entire proceeds of which are paid into the county treasury, and each license so prepared by him shall be first numbered by the treasurer, and by said treasurer charged to the auditor, in a book kept for that purpose; the auditor shall then issue said licenses to the tax collector from time to time as the same may be required, and charge the collector with the same and upon the first Monday in each month, the collector, with the treasurer, shall appear at the office of the auditor, and settle for all licenses by him sold.

SEC. 51. The county auditor shall, on the Tuesday next following the first Monday in each month, report, by mail, to the territorial auditor, the amount of money in the county treasury, belonging to the territory, stating specifically in said report the amount received from each source of revenue, prior to making which report he shall examine the books of the county treasurer, and shall administer to the treasurer an oath, declaring that said books are correct, and that all the money received by him for, or on account of the territory, has been duly entered therein. The territorial auditor shall forward to the auditor, blank forms for the accounts to be rendered, and for the oath to be taken under this section, and the auditor

shall from time to time furnish the tax collector with a sufficient number of licenses, taking his receipt therefor.

POLL TAX.

Sec. 52. Poll tax who liable for.

- 53. Territorial auditor shall furnish blank receipts for poll tax.
- 54. Additional bond from tax collector.
- 59. Forged receipt, enforcement of payment.
- 65. Oath of tax collector for amount collected.
- 67. License, officers and professional persons to pay.
- 69. Brokers, bankers, etc., who liable to pay licenses.
- 73. Selling and vending goods, etc.
- 75. Hawkers, etc., return of licenses not issued.
- 80. Joint settlement of auditor and treasurer.
- 81. Penalty for issuing false receipts.
- 82. Money paid into treasury, duty of treasurer.
- 86. Penalty for using or loaning public money.
- 88. Compensation of collectors, neglect of duty.
- 92. When settlement to be made.

Sec. 52. Each male inhabitant of this territory, over twenty-one, and under fifty years of age, and not by law exempt, shall pay a poll tax, for the use of the territory and county, of four dollars: *Provided*, The same be paid between the first Monday of May and the first Monday in August; but if the said poll tax is not paid prior to the first Monday in August, it shall be five dollars; and seventy-five cents of the extra dollar shall be paid to the county treasurer for the school fund, and twenty-five cents be retained by the tax collectors as fees, in addition to ten per cent. on the first four dollars, which it shall be lawful for him to retain as compensation for the collection of said poll tax.

Sec. 53. The territorial auditor shall, before the first Monday in April of each year, cause proper blank receipts for poll taxes to be printed, of a uniform appearance, changing the style thereof each year; and said auditor, after signing and numbering them, shall cause a number thereof, equal to the probable number of inhabitants in each county, liable to pay poll tax, to be immediately forwarded to the county treasurer of each county, who shall sign them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose, and thereupon deliver them to the county auditor, who shall likewise sign them, and make an entry of

the number he receives, in a book to be kept by him for that purpose.

SEC. 54. The county auditor shall from time to time issue to the tax collector so many of the receipts for poll tax as he may need, taking his receipt therefor.

SEC. 55. No receipts for poll tax, other than those mentioned in the fifty-third section of this act, shall be used, or given, for the payment of any such tax; and any tax collector who shall receive any poll tax, without delivering the proper receipt, required by law, shall be guilty of a misdemeanor for each poll tax so received, and, on conviction thereof, shall be punished by imprisonment in the county jail, not less than three months, nor more than one year, or by a fine of not less than one hundred, nor more than one thousand dollars, for each offence, or by both such fine and imprisonment.

SEC. 56. Upon receiving such receipts from the county auditor, the tax collector shall give a receipt to said auditor for the same; and the said auditor shall immediately charge the same to the tax collector so receiving them. All receipts delivered to the tax collector before the first Monday in May, shall be filled out with the sum of four dollars, and four dollars shall be charged to him for each one so delivered; and all such receipts delivered to the tax collector after the first Monday in August, in each year, shall be filled out with the sum of five dollars, and five dollars shall be charged to him for each one so delivered.

SEC. 57. The board of commissioners of each county shall exact (if they deem it advisable) an additional bond from the tax collector, with additional sureties, in such penal sums as the said board shall believe to be necessary to insure the prompt and faithful payment to the county treasurer, of all moneys received by such tax collector for poll tax.

SEC. 58. No person shall be deemed or held to have paid his poll tax, unless he is able to exhibit a receipt therefor, issued from the office of the territorial auditor, or otherwise prove the payment of the same.

SEC. 59. Any person, or persons, who shall pass, sell, or transfer, or who shall forge, or fraudulently issue any receipt, or receipts, for poll tax, contrary to the spirit or intention of this act, shall be guilty of felony, and, on conviction thereof, shall be punished by imprisonment in the territorial prison, for not less than one year, nor more than two years.

SEC. 60. To enforce the collection of poll taxes, as provided in this act, the tax collector may seize so much of any and every species of personal property whatever, claimed by any person liable to, and refusing or neglecting to pay his poll

tax, or property in the possession of, or due from any other person, and belonging to such person so refusing to pay such poll tax, as will be sufficient to pay such poll tax and costs of seizure, which costs shall not exceed three dollars; and shall, and may sell the same at any time or place, upon giving a verbal notice of one hour previous to such sale; and any person indebted to another, liable to pay poll tax, but who has neglected or refused to pay the same, shall be liable to pay said tax for such other person, after service upon him by the tax collector of a notice in writing, stating the name or names of the person or persons so liable, and owing poll tax, and such debtor may deduct the amount thereof, with the costs of serving said notice, which shall be one dollar (and for which he shall be equally responsible), from such indebtedness.

SEC. 61. The tax collector, after having deducted the poll tax for which such property was sold, and the necessary fees and costs of sale, shall return the surplus of the proceeds to the owner of the property; a delivery of the possession of the property by the tax collector to any purchaser, at any such sale, shall be a sufficient title in the purchaser, without execution of a certificate of purchase thereof, by the tax collector.

SEC. 62. If any person shall give to the tax collector, or his deputy, a false name, or shall refuse to give his name, he shall be guilty of misdemeanor, and shall be arrested upon complaint of the tax collector, or his deputy, and upon conviction before a justice of the peace, he shall be punished by a fine of not less than ten dollars, nor more than one hundred dollars, or by imprisonment for a term not less than two days, nor more than three months, or by both fine and imprisonment.

SEC. 63. Active members of fire companies shall be, and are hereby declared exempt from paying poll tax.

SEC. 64. All money collected as poll tax, under the provisions of this act, after the expenses of collection are paid, shall be paid into the county treasury; one half thereof to be appropriated to territorial purposes and the remaining one half to county purposes.

SEC. 65. On the first Monday of each month, the tax collector shall make oath, before the county auditor, of the total number of poll taxes collected by him during the last preceding month, and shall at the same time, file the county treasurer's receipt for the total amount of poll taxes collected, less ten per cent., allowed by this act for fees; and on the first Monday in August, he shall return all the four dollar poll tax receipts by him received and not used, and shall pay to the treasurer the total amount collected and not paid in theretofore, subject to the deduction aforesaid; and he shall, at the

same time, receive from the territorial auditor, through the treasurer and county auditor, a sufficient number of five dollar receipts to enable him to collect taxes from all the polls in his county, who have not then paid; and on the Saturday next preceeding the third Monday in December in each year, the tax collector and the treasurer shall attend at the office of the county auditor, and the county auditor shall then and there finally settle with the tax collector for all poll tax receipts signed by the treasurer and delivered to him; and the tax collector shall then pay over the amount of all poll tax receipts received by him, not then or theretofore returned; and all the poll tax receipts returned by the tax collector shall be forthwith transmitted by the county auditor, with his usual statement, to the territorial auditor; and no poll tax receipts shall be valid, for any year, unless issued after the first Monday of May in such year.

SEC. 66. At the settlement with the tax collector, required on the third Monday in December, it shall be the duty of the county auditor, and he is hereby required, to forthwith transmit to the territorial auditor a certified statement of the amount of poll taxes paid over to the county treasurer of his county up to that time, and shall deliver a duplicate of such statement to the county treasurer; and on the final settlement on the Saturday next preceeding the third Monday of December, in each year, the county auditor shall immediately upon the conclusion thereof, transmit a certified statement to the territorial auditor, stating therein the number of all receipts for poll tax delivered by the county treasurer to him, the number of such receipts issued by him to the tax collector, the number of such receipts returned by the tax collector, and the number of such receipts then transmitted to the territorial auditor.

SEC. 67. There shall be levied and collected by the tax collector a license tax, as follows: First. From each proprietor or keeper of a billiard table, not kept for the exclusive use of the owner or his family, for each table twenty dollars per quarter; for a nine or ten pin or bowling alley, twenty-five dollars per quarter. License to be granted for a term not less than three months. Second. From the manager or lessee of every theatre, five dollars per day, if granted for a less term than one month; if granted for one month, one hundred dollars shall be paid; if granted for three months, two hundred dollars; if granted for one year, six hundred dollars; and for each exhibition of serenaders, or opera, or concert singers, the same payment for license as is required for theatrical performances. Third. For each day a caravan, menagerie, or circus performance is exhibited, thirty dollars for each day of

exhibition ; of any figures, wire or rope dancing or sleight-of-hand performances for reward, the sum of twenty dollars. Fourth. From each and every insurance company transacting an insurance business in this territory, twenty-five dollars per year. Fifth. From each pawnbroker, fifty dollars per quarter year. Sixth. From each keeper of an intelligence office, fifteen dollars per quarter year. Seventh. That all territorial, county and township officers shall pay a tax of one per cent. upon their salaried and official incomes. Eighth. That each professional man, before practicing as such, including physicians, surgeons, dentists, and attorneys at law, shall pay a tax in their several professions by paying into the county treasury the sum of twenty dollars, each, per annum.

SEC. 68. Licenses shall be obtained by the person or persons, private association, or corporation, doing business in this territory, engaged in one or more of the following occupations, to wit: In buying or selling foreign or inland bills of exchange, or in loaning moneys at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons, or territorial, county, or city stocks, or indebtedness, or stocks of incorporated companies or unincorporated companies, or person or persons; or in buying or selling gold dust, or silver, bullion, gold or silver coin; keepers of savings banks; or engaged as common carriers in transmitting or carrying gold dust, gold or silver coin, or bullion, from any place in this territory to any place without this territory, or from one place to another place within the territory, for profit; or engaged in receiving general or special deposits of gold dust, gold or silver coin, or bullion, for profit: *Provided*, That checks used in the transaction of business between parties within this territory shall not be included as being liable to the provisions of this act.

SEC. 69. Brokers, or such persons, associations, or corporations as are engaged in one or more of the following occupations, to wit: In loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons, or in buying or selling United States government, territorial, county, or city stocks, or other evidences of United States government, territory, county, or city indebtedness, or stocks, or notes, bonds, or other evidences of indebtedness of incorporated companies, or in buying or selling gold dust, gold or silver bullion, or gold or silver coin, or in receiving special or general deposits of gold dust, gold or silver bullion, or gold or silver coin for profit, or in carrying or transmitting, as common carriers, gold dust, or gold or silver bullion, or gold or silver coin from any place within this

territory to any place without this territory, or from any one place to another within this territory, for profit, or in keeping or conducting savings banks, shall be divided into five classes, as follows: Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter, and over, shall constitute the first class; those doing business to the amount of two hundred thousand dollars, and less than two hundred and fifty thousand dollars per quarter, shall constitute the second class; those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars per quarter, shall constitute the third class; those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter, shall constitute the fourth class; those doing business in any amount under fifty thousand dollars per quarter, shall constitute the fifth class. The licenses shall be obtained from the tax collector, and shall be given, for the first class, upon the payment of one hundred dollars per quarter; for the second class, eighty dollars per quarter; for the third class, fifty dollars per quarter; for the fourth class, forty dollars per quarter; for the fifth class, thirty dollars per quarter; said amounts to be paid to the collector of taxes in each county in which the party applying therefor desires to or does transact any or all of the occupations specified in section sixty-eight; and a separate license shall be obtained for each branch establishment or separate house of such business located in the same county.

SEC. 70. Bankers, or such persons, associations, or corporations as are engaged in buying or selling foreign or domestic bills of exchange or drafts shall be divided into five classes, as follows: Those doing business in the aggregate to the amount of five hundred thousand dollars or over, per month, shall constitute the first class; those doing business to the amount of three hundred thousand dollars, and less than five hundred thousand dollars per month, shall constitute the second class; those doing business to the amount of two hundred thousand dollars, and less than three hundred thousand dollars per month, shall constitute the third class; those doing business to the amount of one hundred thousand dollars, and less than two hundred thousand dollars per month, shall constitute the fourth class; those doing business in any amount less than one hundred thousand dollars per month, shall constitute the fifth class. The license for the first class shall be given upon the payment of one hundred dollars per month; for the second class upon the payment of sixty dollars per month; for the third class upon the payment of fifty

dollars per month; for the fourth class upon the payment of forty dollars per month; for the fifth class upon the payment of thirty dollars per month.

SEC. 71. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay licenses as provided in this and the foregoing sections, and the collector is hereby empowered, and it shall be his duty to require each person to state, under oath or affirmation, the amount of business which he, or the firm of which he is a member, or for which he is agent or attorney, or the association or corporation of which he is president, secretary, or managing agent, have done in the last preceding three months, and also to make a statement under oath, if required, in order to carry out the provisions in sections sixty-eight, sixty-nine and seventy of this act, and thereupon, such person, agent, president, secretary or other officer, shall procure a license from said tax collector, for three months, of the class of which such party is liable to pay; and in all cases where an under estimate has been made by the party applying, the party making such under estimate shall be required to pay a double license for the next quarter. License shall be procured immediately before the commencement of any business, or occupation liable to license tax, under this and foregoing sections. Such license shall authorize the party obtaining the same in his town, city, or particular locality in the county, to transact business as provided in such license: *Provided, however,* That nothing in this act, nor in any license issued under it, shall be construed to authorize any person to carry on any business within the limits of any incorporated city or town authorized by its charter to impose or levy city or town license taxes, unless such person shall, in addition to the license, if any required by this act, also procure the license or licenses required by the ordinances or orders of such city or town; and *Provided further,* That any person or persons who shall commence or continue to carry on or transact any business, trade, profession or calling, for the transaction or carrying on of which a license is required by this act, without procuring the proper license, as herein required, such person shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than ten, nor more than one hundred dollars; and, *Provided further,* That if any person or persons required by the provisions of this act to take out a license, shall fail, neglect or refuse to take out such license in the manner provided in this act, or shall carry on or attempt to carry on business without such license, the collector may direct suit, in the name of the people of the United States in the territory

of Idaho, as plaintiffs, to be brought against him or them for the recovery of the license money, and in such case, either the collector or attorney may make the necessary affidavit, and a writ of attachment may issue without any bonds being given on behalf of the plaintiffs, and in case of a recovery by the plaintiffs, twenty dollars liquidated damages shall be included in the judgment and costs, and be collected from the defendant, and five dollars thereof shall be paid to the collector, and fifteen dollars to the attorney prosecuting the suit. Upon the trial of any criminal action provided for by this section, the defendant shall be deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead, in bar of the criminal action, a recovery against him, and the payment by him, in a civil action, of the proper license money, damages and costs.

SEC. 72. Every person who has a fixed place of business who may deal in goods, wares, or merchandise, wines or distilled liquors, except the agricultural productions of this territory, (when sold by the producers thereof,) and except such as are sold by auctioneers under license, according to law, shall pay quarterly an amount of money for license as required by the class in which such person is placed by the tax collector of the county, under the provisions of the succeeding section: *Provided, always,* That nothing herein shall be construed to extend to physicians, apothecaries, or chemists, as to any wines or spirituous liquors which they may use in the preparation or compounding of medicines.

SEC. 73. Every person who shall sell or vend any goods, wares or merchandise, or wines or distilled liquors, drugs or medicines, jewelry or wares of precious metals, and persons who keep horses and carriages for rent or hire, except mules, horses or animals used in the transportation of goods, shall obtain from the tax collector of the county in which such business may be transacted, for each of the branches of business in this and the preceding section enumerated, a license for the transaction of that business, at the following rates, to-wit: All persons dealing as aforesaid shall be classed according to the amount of the average monthly sales, or rates effected in the following manner, that is to say: Those who are estimated to make average monthly sales to the amount of one hundred thousand dollars or more, shall constitute the first class; of seventy-five thousand dollars, and less than one hundred thousand dollars, shall constitute the second class; of fifty thousand dollars, and less than seventy-five thousand dollars, shall constitute the third class; of forty thousand dollars, and less than fifty thousand dollars, shall constitute the

fourth class; of thirty thousand dollars, and less than forty thousand dollars, shall constitute the fifth class; of twenty thousand dollars, and less than thirty thousand dollars, shall constitute the sixth class; of ten thousand dollars, and less than twenty thousand dollars, shall constitute the seventh class; of five thousand dollars, and less than ten thousand dollars, shall constitute the eighth class; of two thousand dollars, and less than five thousand dollars, shall constitute the ninth class; of all amounts under two thousand dollars, the tenth class. The license for the first class shall be given upon the payment of one hundred dollars per month; for the second class, seventy-five dollars per month; for the third class, fifty dollars per month; for the fourth class, forty dollars per month; for the fifth class, thirty dollars per month; for the sixth class, twenty dollars per month; for the seventh class, fifteen dollars per month; for the eighth class, ten dollars per month; for the ninth class, seven dollars and fifty cents per month; for the tenth class, five dollars per month: *Provided*, That the sale of liquors and wines by persons licensed under this section shall not be in less quantities than one quart, and no license shall be issued for a less time than three months. The moneys collected for licenses provided to be granted by this and the preceding sections of this act, shall be paid into the county treasury for territorial and county purposes.

SEC. 74. All tavern and inn keepers, and persons who may dispose of any spirituous, malt or fermented liquors, or wines in less quantities than one quart, shall, before the transaction of any such business, obtain a license from the tax collector, for which they shall pay the sum of fifty dollars per quarter: *Provided, however*, That all persons engaged in retailing liquors in connection with entertainments for travellers, at any point distant three miles or more outside the limits of any city or town, within this territory, shall pay a quarterly license of fifteen dollars, and one dollar to the tax collector for his fees; one-half of said fees shall be paid to the county auditor, as made and provided for in this act. The moneys collected for licenses, under the provisions of this section, shall be paid into the county treasury for territorial and county purposes.

SEC. 75. Every travelling merchant, hawker, or peddler, who shall carry a pack and vend wares, goods or merchandise of any kind, and every auctioneer, shall pay for each license ten dollars per month; and every such travelling merchant, hawker or pedlar who shall use a wagon, or one or more animals for the purpose of vending any wares or merchandise of any kind, or wines, fermented liquors, or spirituous liquors,

shall pay for each license twenty dollars per month: *Provided*, That nothing in this section shall be so construed as to apply to the agricultural productions, or to any vegetables or green fruit grown in any place in this territory. The county auditor shall issue to the tax collector the licenses contemplated in this section, which licenses so issued shall authorize the holders of the same to vend goods, wares, and merchandise, as set forth in such license, in the county where such licenses are obtained; and it is hereby made the duty of every justice of the peace, constable, sheriff, tax collector, and peace officer to demand the license of any such pedler or hawker; and if such person be found not to have a license, as directed by law, the person so offering any goods or wares for sale, shall be guilty of misdemeanor, and on conviction, shall be fined in any sum not less than fifty, nor more than one hundred dollars. The money collected under the provisions of this section shall be paid into the county treasury for territorial and county purposes.

SEC. 76. The licenses provided to be granted by the provisions of the next preceding section, shall be granted for three, six, or twelve months, at the option of the party applying for such licenses.

SEC. 77. The county auditor shall cause to be printed a sufficient number of blank licenses, of all classes mentioned in this act, where the entire amount is paid in for territorial and county purposes, for three, six, or twelve months; each license shall also contain a blank receipt, to be signed by the county tax collector on delivery of said license to the purchaser thereof. He shall hand over to the treasurer of the county a sufficient number of blanks for the use of the county, which shall be charged to the said treasurer on the auditor's books. The treasurer shall countersign the same, and deliver them to the county auditor, taking his receipt therefor.

SEC. 78. The county auditor shall from time to time deliver to the tax collector as many of such licenses as may be required, and shall sign the same, and charge them to the tax collector, specifying the class of license in the charge.

SEC. 79. On the first Monday in each month the tax collector shall return to the county auditor all licenses not issued; and the county auditor shall credit him with the amount so returned, so that the account shall show the amount of money received for licenses issued, and open a new account with the tax collector for the next month.

SEC. 80. The county auditor and treasurer of each county in the territory shall, on the first Monday in March, June, September and December, make a joint statement to the board

of commissioners, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury, the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what fund; the total amount of warrants drawn and unpaid; the accounts or claims audited or allowed and unpaid, and the fund out of which they are to be paid; and generally make a full and specific showing of the financial condition of the county.

SEC. 81. If either the treasurer, county auditor, tax collector, or any other person, shall issue, have in his possession with intent to circulate, or put in circulation, any other license than those properly issued to the tax collector, under the provisions of this act, the person so offending shall be guilty of felony, and, on conviction, be sentenced to imprisonment in the territorial prison for a term of not less than one year, nor more than four years; and any tax collector who shall receive the money for a license, without delivering to the person paying for the same the license paid for, or who shall insert the name of more than one person or firm therein, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail not less than three months, nor more than one year.

SEC. 82. Each county treasurer shall keep all the money received by virtue of his office in his own possession, or on special deposit, and no person except the treasurer, or one of his deputies, shall receive or pay out any money in his office; and when any money shall be paid to the county treasurer, he shall give to the person paying the same a receipt therefor, which receipt such person shall forthwith deposit with the county auditor, who shall charge the treasurer therewith, and give the person paying the same an acquittance.

SEC. 83. The treasurers of the respective counties shall at all times hold themselves in readiness to settle and pay all moneys in their hands whenever required to do so by an order signed by the auditor and treasurer of the territory; and the treasurer and auditor are hereby authorized to draw such orders whenever they deem it proper. The treasurers shall, on the second Mondays of March, June, September, and December, in each year, proceed to the territorial capital, and shall settle in full with the auditor and pay over in cash to the treasurer of the territory, all funds which shall have come into their hands as county treasurers, for the use and benefit of the territory, taking therefor a receipt from the treasurer of the territory, which receipt he shall forthwith file with the auditor

and any county treasurer who shall fail, neglect, or refuse, on the days above specified, or within fifteen days thereafter, to then and there settle and make payment as required by this act, shall forfeit all fees and percentage, which would have otherwise been due him on said settlement; and the auditor is hereby authorized and required to withhold all such fees and percentage, and require the same to be paid into the treasury for the use and benefit of the territory. Before making any settlement, each county treasurer shall produce to the auditor of the territory a report from the county auditor, together with a duplicate thereof, stating specifically the amount due the territory from each particular source of revenue, the original of which shall be filed with the auditor of the territory, who shall enter upon the same, and also upon the duplicate, the cash paid to the treasurer of the territory, and also the commissions allowed to the county treasurer for his payments. The county treasurer shall file the duplicate report with the auditor of his county, whereupon the auditor shall balance the treasurer's account; and it shall be the duty of the auditor, to furnish the treasurer with the report which such treasurer is required to produce in making his settlement with the territory.

SEC. 84. And each county treasurer shall, at the same time of making his settlement, produce to the auditor of the territory, the certified statement of the county auditor, of the amount allowed and paid to the assessor, tax collector, and auditor, as prescribed in this act; and no county treasurer shall be allowed to make any settlement with the auditor of the territory, or in any manner to release himself and bondsmen from liability for the full amount by him received, unless he produces to the auditor, the statements required by this section.

SEC. 85. Whenever any allowance is made to any assessor, tax collector, or auditor, as in this act provided, the clerk of the board of commissioners shall certify the account so allowed to the auditor, who shall draw his warrant on the county treasurer for that part of the same which the county is required to pay, which shall be in proportion to the amount of taxes levied for territorial and county purposes respectively; and the auditor shall make a certified copy of the account, and indorse thereon the amount due from the territory, and indorse on the account remaining in his office the same, and shall furnish such copy, with the indorsement thereon, to the county treasurer, who shall pay out of the money belonging to the territory, the amount indorsed on such account, to the assessor, tax collector, or auditor, and take his receipt thereon; and the

treasurer, on making his quarterly or semi-annual settlement, shall present with the auditor's statement, such copy of the account allowed by the board to the assessor, tax collector, or auditor, indorsed and receipted as herein provided, and the auditor shall allow him for the amount so paid.

SEC. 86. If any tax collector, or county treasurer, shall either directly or indirectly use, loan, or in any manner place out of his possession, otherwise than as on special deposit, any funds belonging to, or collected by, or paid to him for the use and benefit of either the territory or of any county, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be forthwith removed from office, and shall also be punished by a fine in any sum not exceeding five thousand dollars, or imprisonment in the territorial prison for any time not exceeding one year, or by both such fine and imprisonment. The treasurer, tax collector, assessor, auditor, clerk of the board of equalization, and each member of such board, shall each separately perform the duties required of him in his office, and shall not perform the duties of any two officers under this act, except as provided by law; and any officer who shall at the same time perform the duties of any two offices in any manner connected with the public revenue, except in the manner expressly provided by law, or any collecting or disbursing officer who shall refuse, or neglect, the performance of the duties required by this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment in the territorial prison, not more than one year, and by a fine of not less than two hundred, nor more than one thousand dollars, or by both such fine and imprisonment, and shall forthwith be removed from office.

SEC. 87. The books, papers, and accounts, of each officer, in regard to the assessment or collection of taxes, or to the receiving, auditing, or disbursing moneys collected for the use or benefit of the territory, or of any county, shall, at all times during office hours, when not necessarily in use by the officers, be open for any person whomsoever to inspect, or copy, without any fee or charge.

SEC. 88. The collectors of taxes in the counties of this territory, shall be allowed for collecting all taxes, except poll taxes, the following rates on all moneys collected and paid over by them in each fiscal year, commencing on the first Monday in May; ten per centum on the first ten thousand dollars; four per centum on all over ten thousand dollars, and under twenty thousand dollars; three per centum on all over twenty thousand, and under fifty thousand dollars; *Provided*, That the pay or salary of any collector shall exceed the sum of

twenty-five hundred dollars per annum, the collector of taxes shall also receive from the party one dollar for each business license sold, one half of which shall be paid to the county auditor. The assessor and his deputies shall keep a correct account of the number of days they have been employed in the discharge of their official duties, and shall verify the same on oath before the clerk of the board of commissioners, or other person qualified to administer oaths, and then shall present said account to the board of commissioners, who, if satisfied of the correctness of the same, shall allow it, and order payment to be made at the rate of eight dollars per day. All county officers who are required, under this act, to copy any assessment roll, or delinquent list, shall receive in payment of the same, an amount to be allowed by the board of commissioners of the respective counties, not to exceed twenty-five cents per folio of one hundred words. The territorial treasurer is hereby authorized to pay out of the territorial treasury all necessary expenses incurred in the transmission of territorial moneys from the respective county treasurers to the territorial treasurer. No county treasurer shall be entitled to any percentage or compensation upon school fund moneys.

SEC. 89. The amount allowed and paid out of the county treasury to the collectors of taxes, assessors, and auditors, for services under this act, shall be apportioned by the creditor in proportion to the amount of territorial tax, and charged to the territory and county rateably, in said proportion, and a verified statement of the amount allowed by the board of commissioners to said officers shall entitle the auditor to credit the county treasurer with such amounts.

SEC. 90. Whenever any assessor, collector, auditor, treasurer, or other officer upon whom any duties devolve under this act, or under any other revenue act of this territory, shall wilfully neglect, or refuse to perform any such duties, or shall perform them in a careless or incompetent manner, he shall be deemed guilty of a misdemeanor and shall be removed from office in the manner prescribed by law; and when an issue of fact shall have been joined under any presentment made, or proceeding commenced, to remove such officer from his office, the board of commissioners (and in case such officer be a commissioner, the probate judge), shall have power to suspend such assessor, collector, auditor, treasurer, district attorney, or other officer, from his powers and duties under this act, and under any other revenue act, and to appoint a competent person in his place, until the proper tribunal shall have either removed or acquitted such suspended officer; and any act on or about the revenue, or the assessment, or the col-

lection of taxes, or sale of property for the non-payment of taxes, performed by any such temporary officer, shall be as valid and of the same force and effect as if performed by the suspended officer: *Provided, however,* That such appointee shall first qualify, and give such bond, with sureties for the faithful performance of the duties of his office, as may be required of persons elected thereto.

SEC. 91. Nothing contained in this act shall be construed so as to prohibit any county, city, or town from levying and collecting general or special taxes, in accordance with the provisions of its charter, or of any special act.

SEC. 92. Each assessor, tax collector, district attorney, and county treasurer shall, on the Saturday next preceding the third Monday in December, in each year, attend at the office of the county auditor, for the purpose of making a settlement with him on account of all transactions connected with the revenue of the year ending on that day; and each and every officer, whether assessor, tax collector, district attorney, treasurer, or auditor, on going out of office, shall deliver to his successor in office, all the public money, books, accounts, papers, and documents appertaining to his office and in his possession, taking a receipt therefor.

SEC. 93. That for the purpose of collecting the revenue of the territory, and preventing the evasion of the license laws now in force upon the general statutes of this territory, all billiard tables, bar fixtures, and furniture belonging to, or in use for the purpose of carrying on the business of any billiard, drinking saloon, restaurant, or eating house, are held liable for the amount due for the license tax assessed on the same; and it is hereby expressly provided that, upon the failure of the parties keeping any such establishment, or exercising ownership therein, to pay the license of the same, in manner and form as provided by law, the tax collector of the county, town or district where such establishment may be located, or properly authorized officer whose duty it shall be to enforce the collection of any such license, may seize any such billiard table, bar fixtures, saloon furniture, and such appurtenances, and shall proceed to sell, as upon execution at law, any such articles, or so much thereof, as may be requisite for the payment of such tax or license as may be due and owing on account of the same.

SEC. 94. The county recorder of each county in this territory, before he shall enter, or allow satisfaction to be entered on any mortgage or lien of record in his office, or record any release of any mortgage or lien in his office, other than mortgages given to secure the purchase money of the property

mortgaged, shall administer to the mortgagee, or person holding such mortgage or lien, or his or her agent or attorney, the following oath or affirmation, which shall be reduced to writing by the recorder at the foot or in the margin of the record of such mortgage or lien, subscribed by the party making the same: "I, _____ do solemnly swear (or affirm) that all taxes for territorial or county purposes, assessed on the money or debt secured by this mortgage (or lien) have been paid;" for which affidavit the recorder shall be allowed fifty cents; and if any person shall knowingly swear falsely in making such affidavit, he shall be deemed guilty of perjury, and punished accordingly; but if any county recorder shall enter, or permit to be entered, satisfaction, without making an entry of such affidavit, he shall be liable on his official bond to pay the county the sum of five hundred dollars, which may be recovered by an action, which it shall be the duty of the prosecuting or district attorney to prosecute, and he shall have for such prosecution twenty-five per centum on the amount recovered.

SEC. 95. Whenever any action shall be brought for the foreclosure of any mortgage or lien mentioned in the next preceding section, a similar affidavit to that mentioned in said section, shall be attached to the complaint in such action; and in case the same shall not have been attached at the commencement of the action, the court in which the suit is pending, on motion of the defendant therein, shall make an order staying all proceedings in such action until such affidavit shall have been filed, or proof made of the payment of such taxes; and it shall be the duty of the court, before entering a decree or judgment in any such case, to require such affidavit or proof.

SEC. 96. An annual tax of one dollar upon each one hundred dollars value of all the nett proceeds or receipts of all miners' mining claims and mining interests in this territory, of every description whatever, not otherwise subject to taxation under the provisions of this act, is hereby levied and directed to be collected and paid into the county treasury of the proper county; four-tenths for territorial and six-tenths for county purposes.

SEC. 97. The county assessor of each county, by himself or his deputy shall, once each year, ascertain by diligent inquiry, the names of all persons, corporations, associations, companies, or firms claiming, owning or working, or having the control of any mine or mines, or any share, stock, or interest whatever in any mine or mines within his county, and shall list all such names in alphabetical order in a separate

part of the assessment roll from the other assessment entries, and shall at the same time, make an assessment of the nett receipts and proceeds from each and all such mines, interest, stock, or share therein, to the corporation, associations, firms, companies, person or persons owning claims or working the same.

SEC. 98. For the purpose of enabling such assessor, or his deputy, to make such assessment, he shall demand the necessary statement under oath or affirmation, from such person, and from the president, cashier, treasurer, or managing agent of each corporation, association, company, or firm, of the total amount received or produced from his or their mine or mines, interest, share, or stock in such mine or mines, by the reduction of ores, sale of rock or quartz, or any material of value whatever, or from all other sources of every kind or character, together with the amount necessarily expended in producing the same, during the year next preceding the time of making such statement to the assessor or his deputy. Such assessor, or his deputy, shall then enter the total amount specified in such statement opposite the name of such person, person, firm, corporation, association, or company assessed.

SEC. 99. If any person, officer, or agent shall neglect or refuse, on request of such assessor or his deputy, to make such statement under his oath or affirmation, such assessor or his deputy shall make an estimate of the probable gross proceeds of such mine or mines, or such interest, stock, or share therein, together with the amount necessarily expended in producing the same, for the year next preceding such refusal or neglect, and the value so affixed by such assessor shall not be reduced by the board of equalization: *Provided*, That the assessment authorized to be made by the provisions of the next preceding sections of this act, shall be equalized, duplicated, and collected in the same manner, and time, as other taxes are under the provisions of this act.

SEC. 100. The nett proceeds from all mines or mining claims, or from all stock, shares or interest therein, of every person, corporation, association, firm or company shall be assessed and taxed in the county wherein the mine or mining claim is located.

SEC. 101. This act shall take effect and be in force from and after its approval by the governor.

APPROVED February 4th, 1864.

CRIMES AND PUNISHMENTS.

AN ACT concerning Crimes and Punishments.

I.—PERSONS CAPABLE OF COMMITTING CRIMES.

- Sec. 1. Essence of crime, intent how manifested.
3. Of sound mind, infants incapable.
5. Counseling idiots or infants.
6. Married women under coercion.
7. Drunkenness, exception, misfortune.
9. Committed under duress.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. In every crime, or public offence, there must be union or joint operation of act and intention, or criminal negligence.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

SEC. 4. An infant, under the age of fourteen years, shall be deemed incapable of knowing the distinction between good and evil, unless the contrary be clearly shown.

SEC. 5. Any person counselling, advising or encouraging an infant, under the age of ten years, a lunatic or idiot to commit any offence, shall be prosecuted for such offence, where committed, as principal; and, if found guilty, shall suffer the same punishment that would have been inflicted on such person counselling, advising or encouraging as aforesaid, had he, she or they committed the offence directly, without the intervention of such idiot, lunatic or infant.

SEC. 6. A married woman acting under the threats, command or coercion of her husband, shall not be found guilty of any crime not punishable with death: *Provided*, It appear, from all the facts and circumstances of the case, that violent threats, commands or coercion were used; and in such case, the husband shall be prosecuted as principal, and receive the same punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

SEC. 7. Drunkenness shall not be an excuse for any crime, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offence; in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she or they had been possessed of sound reason and discretion.

SEC. 8. All acts committed by misfortune or accident shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

SEC. 9. A person committing a crime not punishable with death, under threats or menaces, which sufficiently show that his or her life was in danger, or that he or she had reasonable cause to believe, and did believe, that his or her life was in danger, shall not be found guilty; and such threats or menaces, being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offence, shall be considered as principal or principals and suffer the same punishment as if he or she had perpetrated the offence.

II.—ACCESSORY.

SEC. 10. An accessory is he or she who stands by and aids, abets or assists; or who, not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principals, and punished accordingly.

SEC. 11. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with, or found guilty of crime. Any person found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in any sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime.

III.—WITNESSES.

SEC. 12. The party or parties injured shall in all cases be competent witnesses; the credibility of all such witnesses shall be left to the jury, as in other cases. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness against another in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution; and any person may be compelled to testify, as provided in this section.

SEC. 13. No black, or mulatto person, or Indian, or Chinese, shall be permitted to give evidence in favor of, or against any white person. Every person who shall have one-eighth part, or more, of negro blood, shall be deemed a mulatto, and every person who shall have one-half Indian blood shall be deemed an Indian.

SEC. 14. The solemn affirmation of witnesses shall be deemed sufficient. A false or corrupt affirmation shall subject the witness to all the penalties and punishments provided for those who commit wilful and corrupt perjury.

IV.—OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

SEC. 15. Murder, malice.

- 17. Malice when implied, degrees of murder, punishment.
- 18. Manslaughter, when punished as murder.
- 21. Involuntary manslaughter, punishment.
- 23. Death, within a year and day, computation.
- 24. Place of trial, homicide, jurisdiction.
- 26. Justification insufficient.
- 27. Killing in self defense, officer justifiable in.

- SEC. 29. Justifiable homicide, excusable, by misadventure.
33. Proving mitigating circumstances.
34. Woman concealing death of bastard child, punishment.
35. Dueling, persons concerned disfranchised.
37. Persons implicated to give evidence.
38. Posting for not fighting, prize fighting.
40. Drawing deadly weapons, fines, how disposed of, duties of officers, etc.
41. Assaulting and intimidation.
42. Administering poison, procuring abortion.
43. Mayhem, rape, crime against nature.
46. Assault, assault with intent.
48. Assault and battery, false imprisonment.
50. Kidnapping, forcing woman to marry.
54. Abduction of children, poisoning water.
55. Extortion.

SEC. 15. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

SEC. 16. Express malice, is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

SEC. 17. Malice shall be implied, when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, designate by their verdict, whether it be murder of the first or second degree; but, if such person shall be convicted on confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and give sentence accordingly. Every person convicted of murder of the first degree, shall suffer death; and every person convicted of murder in the second degree, shall suffer imprisonment in the territorial prison for a term not less than ten years, and which may be extended to life.

SEC. 18. Manslaughter is the unlawful killing of a human being, without malice, express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient

to make the passion irresistible ; or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

SEC. 19. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt, by the person killed, to commit a serious personal injury on the person killing.

SEC. 20. The killing must be the result of that sudden violent impulse of passion supposed to be irresistible ; for, if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder.

SEC. 21. Involuntary manslaughter shall consist in the killing of a human being, without any intent to do so, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner : *Provided*, That when such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offence shall be deemed and adjudged to be murder.

SEC. 22. Every person convicted of the crime of manslaughter, shall be punished by imprisonment in the territorial prison, for a term not exceeding ten years.

SEC. 23. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first.

SEC. 24. If the injury be inflicted in one county, and the party die within another county, or without the territory, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county, and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

SEC. 25. Justifiable homicide, is the killing of a human being in necessary self-defense, or in defense of habitation, property, or person, against one who manifestly intends, or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another, for the purpose of assaulting or

offering personal violence to any person, dwelling or being therein.

SEC. 26. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge.

SEC. 27. If a person kill another in self-defense, it must appear that the danger was so urgent and pressing that, in order to save his own life or prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the fatal blow was given.

SEC. 28. If an officer, in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance he or she be killed, the officer or private person so killing shall be justified; *Provided*, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused, without success; and that, from all probability, there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

SEC. 29. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

SEC. 30. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another—as where a man is at work with an axe, and the head flies off and kills a bystander, or where a parent is moderately correcting his child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under

which he acts, either in the manner, the instrument or quantity of punishment, and death ensue, it will be manslaughter or murder, according to the circumstances of the case.

SEC. 31. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 32. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

SEC. 33. The killing being proved, the burden of proving circumstances or mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

SEC. 34. If any woman shall endeavor privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the territorial prison for a term not exceeding one year; *Provided, however,* That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

SEC. 35. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot gun, pistol, bowie knife, dirk, small sword, back sword, or any other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and upon conviction thereof shall be punished accordingly.

SEC. 36. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the territorial prison not less than two, nor more than ten years, and shall be incapable of voting or holding any office of trust or profit, under the laws of this territory.

SEC. 37. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, aid, surgeon or spectator, or who shall advise or give

assistance to such duel, shall be a competent witness against any person offending against any of the provisions of this act, and may be compelled to appear and give evidence before any justice of the peace, grand jury or court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

SEC. 38. If any person shall post another, or, in writing, or print, or orally, shall use any reproachful or contemptuous language to, or concerning another, for not fighting a duel, or for not sending, or accepting a challenge, he shall be imprisoned in the territorial prison for a term not less than six months, nor more than one year, and fined in any sum not less than five hundred, nor more than one thousand dollars.

SEC. 39. If any person, with or without deadly weapons, upon previous concert and agreement, fight one with another, upon conviction thereof, they, or either, or any of them, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years; should death ensue to any person in such fight, or should any person die from any injury received in such fight, within one year and one day, the person or persons causing such death shall be deemed guilty of murder, and shall be punished accordingly.

SEC. 40. That any person in this territory, having, carrying, or procuring from another person, any dirk, dirk knife, sword, sword cane, pistol, gun, or other deadly weapon, who shall in the presence of two or more persons, draw or exhibit any of said deadly weapons, in a rude, angry, and threatening manner, not in necessary self-defense, or who shall, in any manner, unlawfully use the same, in any fight or quarrel, the person or persons so offending, upon conviction thereof in any criminal court in any county in this territory, shall be fined in any sum not less than one hundred nor more than one thousand dollars, or imprisoned in the territorial prison not less than one, nor more than twelve months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution; which said costs shall in all cases be computed and collected in the same manner as costs in civil cases. All fines and forfeitures, arising under the provisions of this act, shall be paid into the county treasury of the county wherein such offence was committed, for county purposes: *Provided, nevertheless,* That no sheriff, deputy sheriff, constable, marshal, or other peace officer, shall be held to answer, under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties.

It shall be the duty of all military, civil, and peace officers in this territory, to be vigilant in carrying the provisions of this act into full force and effect, as well, also, as all grand juries, or grand jurors, to enquire into and make presentments of each and every offence under this act, which shall come under or within their knowledge. It shall be, and is hereby made the duty of all judges in this territory to give this act in charge to the grand juries, at each term of their respective courts; and also, to all trial juries, empaneled for the trial of any of the offences herein before mentioned in this act.

SEC. 41. If any person shall assault and beat another, with a cowhide, stick, or whip, having at the time, in his possession, a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the territorial prison not less than one, nor more than ten years.

SEC. 42. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than ten years, and which may extend to life; and every person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use or cause to be used, any instruments whatever, with the intention to procure the miscarriage of any woman then being with child, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years: *Provided*, That no physician shall be effected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.

SEC. 43. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily, or of purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the territorial prison for a term not exceeding fourteen years.

SEC. 44. Rape is the carnal knowledge of a female, forcibly and against her will; and a person duly convicted thereof, shall be punished by imprisonment in the territorial prison for a term not less than five years, and which may extend to

life ; and any person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of twelve years, either with or without her consent, shall be adjudged guilty of the crime of rape, and be punished as before provided.

SEC. 45. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the territorial prison for a term not less than five years, and which may extend to life.

SEC. 46. An assault is an unlawful attempt, coupled with a present-ability to commit a violent injury on the person of another ; and every person convicted thereof, shall be fined in a sum not less than fifty, nor more than five hundred dollars, or imprisonment in the county jail not exceeding six months.

SEC. 47. An assault with intent to commit murder, rape, the infamous crime against nature, mayhem, robbery or grand larceny, shall subject the offender to imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the territorial prison not less than one year, nor exceeding two years, or to a fine not less than one thousand, nor exceeding five thousand dollars, or to both such fine and imprisonment.

SEC. 48. Assault and battery is the unlawful beating of another ; and a person duly convicted thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year.

SEC. 49. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the territorial prison for a term not exceeding one year.

SEC. 50. Kidnapping is the forcible abduction or stealing away of a man, woman or child from his or her own home, and sending or taking him or her into another country.

SEC. 51. Every person who shall forcibly steal take or arrest any man, woman or child, whether white, black or colored, or any Indian in this territory, and carry him or her into another county, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take

him or her out of this territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping, and be punished by imprisonment in the territorial prison for any term not less than one, nor more than ten years for each person kidnapped or attempted to be kidnapped.

SEC. 52. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations and the like, any negro, mulatto, or colored person, or Indian, to go out of this territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, colored person or Indian into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnapping, and, upon conviction thereof, shall be punished in the territorial prison for any term not less than one, nor more than ten years.

SEC. 53. Every person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, and shall be thereof convicted, shall be punished by imprisonment in the territorial prison for a term not less than two, nor more than ten years; and the record of such conviction shall operate as a divorce to the party so married.

SEC. 54. Every person who shall maliciously, forcibly or fraudulently lead, take or carry away, or decoy, or entice away any child under the age of ten years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment. Every person who shall wilfully poison any spring, well or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one nor more than ten years.

SEC. 55. If any person, either verbally, or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his or her will, he shall, on conviction thereof, be punished by imprisonment not more than one year, nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars, or by both such fine and imprisonment.

V.—OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

SEC. 56. Arson, first and second degree.

59. Burglary.

SEC. 56. Every person who shall wilfully and maliciously burn, or cause to be burned, in the night time, any dwelling house in which there shall be at the time some human being, shall be deemed guilty of arson in the first degree, and upon conviction thereof, shall be punished by imprisonment not less than two years, and which may extend to life, in the territorial prison.

SEC. 57. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling house or building owned by himself, or the property of another, in the day time, or in the night time, or cause to be burned, any kitchen, office, shop, barn, stable, storehouse, warehouse, or other building, or stacks or stocks of hay or grain, or standing crops, the property of another person, or corporation, or any church, meeting house, school house, state house, court house, or other public building, or any ship, boat or other water craft, or any bridge of the value of fifty dollars or more, over or across any of the water courses in this territory, such person so offending shall be deemed guilty of arson in the second degree, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years; and should the life or lives of any person or persons, be lost by such burning, as mentioned in this and the preceding section, such offender shall be deemed guilty of murder; and shall be punished accordingly.

SEC. 58. Every person who shall wilfully burn or cause to be burned any building or any goods, wares, merchandise or other chattle, which shall be at the time insured against loss or damage by fire, with intent to injure or defraud such insurer, whether the same be the property of such person or any other, shall, upon conviction, be adjudged guilty of arson in the second degree, and punished accordingly.

SEC. 59. Every person who shall, in the night time, forcibly break and enter, or without force (the doors and windows being open) enter into any dwelling house, or any other house whatever, or tent, with intent to commit murder, robbery, rape, mayhem, larceny or other felony, shall be deemed guilty of burglary; and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one, nor more than ten years.

VI.—OFFENCES AGAINST PROPERTY.

- Sec. 60.** Robbery, grand and petit larceny, dog stealing.
64. What constitutes personal goods, recovering stolen goods, etc.
65. Stolen property to be restored to lawful owner.
67. Property stolen out of territory.
68. Marking or branding stock.
69. Embezzlement by public officers.
70. Officer refusing to pay over public funds.
71. Embezzlement, destroying deeds, etc.
73. Removing land marks.
74. Embezzlement by clerks, etc.
75. Conversion of goods by bailee.
76. Embezzlement by lodgers,

Sec. 60. Robbery is the felonious and violent taking of money, goods or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the territorial prison for a term not less than five years, and which may be extended to life.

Sec. 61. Every person who shall feloniously steal, take and carry away, lead or drive away the personal goods or property of another, of the value of fifty dollars or more, shall be deemed guilty of grand larceny; and, upon conviction thereof, shall be punished in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 62. Every person who shall feloniously steal, take and carry, lead or drive away the personal goods or property of another, under the value of fifty dollars, shall be deemed guilty of petit larceny; and upon conviction thereof, shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 63. That every person who shall feloniously steal, take and carry, lead or drive away any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petit larceny; and upon conviction thereof, shall be punished by imprisonment in the county jail not more than six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that, unless the same be paid, the defendant shall be imprisoned in the county jail, at the rate of one day for every two dollars of the fine.

Sec. 64. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, receipts or certif-

icates, or warrants for or concerning money, goods or property, due or to become due, or to be delivered, or any public security issued by the United States or by this territory, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods, of which larceny may be committed, and the money due thereon or secured thereby, and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or affected thereby, as the case may be, shall be deemed the value of the article stolen.

SEC. 65. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery, burglary or embezzlement, knowing the same so to have been obtained, shall, upon conviction, be imprisoned in the territorial prison for a term not exceeding five years, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment; and every such person may be tried, convicted and punished as well before as after the trial of the principal. No person convicted of the offence specified in this section shall be condemned to imprisonment in the territorial prison unless the value of the thing bought or received shall amount to fifty dollars, but the same shall be punished as provided in cases of petit larceny.

SEC. 66. All property obtained by larceny, robbery burglary, or embezzlement, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the property.

SEC. 67. Every person bringing any goods or property into this territory, taken by himself, or which he knew was taken by another in another territory or state, by robbery, burglary, embezzlement or larceny, shall upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this territory, taken in either of the ways aforesaid in another territory or state, be committed to the county jail, to await a requisition from the governor of the territory or state whence such goods or property were brought as aforesaid into this territory: *Provided*, That such person shall not be detained in such custody longer than a period of twelve weeks.

SEC. 68. Every person who shall mark or brand, alter or

deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, or cause the same to be done with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by imprisonment in the territorial prison, for a term not less than six months, nor more than five years.

SEC. 69. Every servant, officer, or person employed in any public department, station or office of the government of this territory, or of any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, books, or book of record, or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money or property of whatever description it may be, being the property of said territory, county or corporate body, shall, on conviction thereof, be punished by imprisonment in the territorial prison for a period of time not less than one year, nor more than ten years.

SEC. 70. If any officer or person who now is or hereafter may be intrusted by law to collect, disburse, or receive, or safely keep any money or moneys, revenue or revenues belonging to this territory, to the school fund of this territory, to the school fund of any county or township of any county in this territory, to any canal, turnpike or railroad fund of this territory, or any county thereof, or to any fund for the improvement of any public road or roads, river, creek or other water course bordering on or within this territory, or to any other fund now being or hereafter to be established by law, for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall thereto be required by law, and demand duly made by the successor or successors of such officer, or person in office, or by the officer or person to whom such money, warrant, bills, notes or orders ought, by law, to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable, every such officer or person shall, on conviction therefor, be punished by imprisonment in the territorial prison for a term not less than one year nor more than two years: *Provided*, That no person

shall be imprisoned in the territorial prison, under this section unless the money not paid over shall amount to more than one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall forever thereafter be disqualified from holding any office of honor, trust or profit in this territory.

SEC. 71. That if any officer of the territory, or of any county, city or town in this territory, charged with the safe keeping, transfer or disbursement of public money, shall convert to his own use, in any way whatever, or shall use, by the way of investment in any kind of property or merchandise, or shall loan with or without interest, any portion of the public moneys, bonds or other evidences of indebtedness of the territory, intrusted to him for safe keeping, transfer or disbursement, ar any other purpose, every such act shall be deemed and adjudged to be an embezzlement of so much of said moneys as shall be thus taken, converted, invested, used or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands, upon the presentation of a draft, or order, or warrant, drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys, promptly, according to law, on the legal requirement of any officer authorized to make such requirement, shall be *prima facie* evidence of such conversion to his own use of the public moneys as may be in his hands. All persons advising, or knowingly or wilfully participating in such embezzlement, upon being convicted thereof before any court of this territory, of competent jurisdiction, shall, for every such offence, forfeit and pay to the territory a fine equal to the amount embezzled, and shall suffer imprisonment in the territorial prison for a term not less than one year nor more than five years.

SEC. 72. Every person who shall fraudulently or maliciously tear, burn, efface, cut or in any way destroy any debt, lease, bond will, or any other writing sealed, or any bank bill, or note, check, warrant or certificate, for the payment of money or other thing, or the delivery of goods, or any certificate or other public security of this territory, or of the United States, or of any state or territory, for the payment of money, or any receipt, acquittance, release, or deference, discharge of any debt, suit, or other demand, or any transfer, or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day book, or other book, or account, or any agreement or contract whatsoever, with intent

to defraud, prejudice, or injure any person, or body corporate, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years.

SEC. 73. Every person who shall wilfully or maliciously remove any monument of stone, wood, or other durable material, erected for designating the corner or other point, or any post or stake fixed or driven the ground for the purpose of designating a point in the boundary of any lot or tract of land, or alter the marks on any tree, post, or other monument, made for the purpose of designating any point, course or line, in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not less than one hundred, nor more than two thousand dollars, or by imprisonment in the county jail for a term not less than one month, nor more than one year.

SEC. 74. If any clerk, apprentice or servant, or other person, whether bound or hired, to whom any money, or goods, or chattels, or other property, shall be entrusted by his master or employer, shall withdraw himself from his master, or employer and go away with the money, goods, chattels, or other property, or any part thereof, with intent to steal the same, and defraud his master or employer thereof, contrary to the confidence and trust in him reposed by his said master or employer, or being in the service of his said master or employer, shall embezzle the said money, goods, or chattels or property, or any part thereof, or otherwise shall convert the same to his own use, with like purpose to steal the same, every person so offending shall be punished in the manner prescribed by law, for feloniously stealing property of the value of the articles so taken, embezzled or converted.

SEC. 75. If any bailee of any money, goods, or property, shall convert the same to his own use, with intent to steal the same, he shall be deemed guilty of grand or petit larceny, according to the amount of the money, or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

SEC. 76. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the property so taken, and on conviction, shall be punished accordingly.

VII.—FORGERY AND COUNTERFEITING.

Sec. 77. Certain offences deemed.

78. Counterfeiting coin, possessing or receiving.

80. Counterfeiting stamps, labels, etc.

81. Selling goods having forged stamps.

82. Possessing or receiving forged instruments in writing.

83. Possessing or passing fictitious papers.

84. Making or possessing counterfeit die or plates.

85. Proof of information, experts to prove.

87. Counterfeiting seals, gold dust, etc.

89. Possessing or receiving counterfeit gold dust, etc.

Sec. 77. Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature or character, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or receipt for money or goods, or any acquittance, release or discharge of any debt, account, suit, action, demand or other thing, real or personal, or any transfer of assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order or assignment of any bond, writing obligatory, or promissory note, for money or other property, or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this territory or not, or shall utter, publish, pass or attempt to pass, as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not; every person so offending shall be deemed

guilty of forgery, and upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 78. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment such counterfeit coin, or permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting; and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 79. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this territory, with intention to utter or pass the same, or permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than one, nor more than fourteen years.

SEC. 80. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred, nor more than six hundred dollars.

SEC. 81. That any person who shall sell any goods, wares or merchandise, having thereon any forged or counterfeit stamps or labels, purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by fine not less than three hundred dollars, nor more than six hundred dollars.

SEC. 82. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bills, or bills for the payment of money or property, with intention to pass the same or procure the

same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this territory or not, knowing the same to be forged or counterfeited; or shall have and keep in his possession any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for the payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, on conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 83. Every person who shall make, pass, utter or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this territory or elsewhere, or with the like intention shall attempt to pass, utter or publish, or shall have in his possession, with the intention to utter, pass or publish any fictitious bill, note, or check, purporting to be the bill, note or check, or other instrument in writing for the payment of money or property, of some bank, corporation, copartnership or individual, where, in fact, there shall be no such bank, copartnership or individual in existence, the said person knowing the said note, bill, check, or instrument in writing for the payment of money or property, to be fictitious, shall be deemed guilty of forgery; and, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one, nor more than fourteen years.

SEC. 84. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or other thing whatever, made use of in counterfeiting the coin, now made current or hereafter to be made current in this territory, or in counterfeiting bank notes or bills, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, shall be destroyed.

SEC. 85. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession, with intent to pass, any such forged bill,

or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 86. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

SEC. 87. Every person who shall fraudulently forge or counterfeit the seal of this territory, or the seal of any court or public officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

SEC. 88. If any person shall counterfeit any kind or species of gold dust, or silver, gold bullion, or bars, lumps, pieces, or nuggets of gold or silver, or description whatsoever of uncoined gold or silver, currently passing in this territory, or shall alter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver as aforesaid, every such person so offending, shall be deemed guilty of counterfeiting, and upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term of not less than one year, nor more than fourteen years.

SEC. 89. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver, gold, bullion or bars, lumps, pieces or nuggets of gold or silver, or any description whatsoever of uncoined gold or silver, currently passing in this territory, or entering in anywise into the circulating medium of this territory, with the intention to pass, utter or put off the same, or permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term of not less than one year, nor more than fourteen years.

VIII.—CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

Sec. 90. Perjury and subordination.

- 91. Conviction by perjury, deemed murder.
- 92. Bribery of judge, or members of legislative assembly.
- 93. Officers receiving bribe, attempting to bribe officers.
- 95. Stealing, altering, or defacing records.
- 96. Inhumanity to prisoners.
- 97. Refusing to deliver records.
- 98. Personating another, obstructing officers in service of process.
- 101. Releasing prisoner after conviction, or before conviction.
- 103. Escape, voluntarily permitting it.
- 104. Aiding escape, releasing prisoner on civil process.
- 106. Aiding unsuccessful attempt to escape, officer permitting, etc., before conviction.
- 108. Officer refusing to receive, or arrest.
- 109. Compromising offences, conspiring to commit, etc.
- 111. Unauthorized action of one for another, embracery.
- 113. Extortion, purchasing judgments.
- 115. Selling office.
- 116. Sending threatening letters.
- 117. Opening sealed letters of another.

SEC. 90. Every person, having taken a lawful oath or made affirmation, in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, wilfully, corruptly, and falsify, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm, as aforesaid, shall be deemed guilty of perjury, or subordination of perjury, as the case may be; and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term of not less than one year, nor more than fourteen years.

SEC. 91. Every person who, by wilful and corrupt perjury, or subordination of perjury, shall procure the conviction and execution of any innocent person, shall be deemed guilty of murder; and, upon conviction thereof, shall suffer the punishment of death.

SEC. 92. If any person or persons shall, directly or indirectly, give any sum of money or other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace, acting within this territory, or to corrupt, induce or influence such judge or justice of the peace to be more favorable to one side than to the other, in any suit, matter or cause pending or to be brought

before him or them ; or shall, directly or indirectly, give any sum or sums of money, presents or rewards, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or any other thing, to obtain, procure or influence any member of the legislative assembly, or to incline, induce or influence any such member of the legislative assembly to be more favorable to one side than the other, on any question, election, matter or thing pending or to be brought before the legislature, or either house thereof; the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with interest and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly who shall accept or receive the same, shall be deemed guilty of bribery ; and, on conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust or profit in this territory.

SEC. 93. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, member of the legislative assembly, or other officer, ministerial or judicial, or assessor, (but such fees as are allowed by law) the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, shall be deemed guilty of bribery ; and, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years, and shall be disqualified from holding any office of honor, trust or profit in this territory.

SEC. 94. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, in any of the cases mentioned in the two preceding sections ; and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, who shall propose or agree to receive a bribe, in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be imprisoned in the territorial prison for a term not less than one year, nor more than five years, and shall be disqualified to hold any office of honor, trust or profit in this territory. '

SEC. 95. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or assessor, or any person whatsoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and wilfully take off, discharge, or conceal, any issue, forfeited recognizance, or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registered acknowledgement, or certificate, or shall alter, deface or falsify any minute, document, book, or any proceeding whatever of, or belonging to any public office in this territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years, and be fined in any sum not exceeding five thousand dollars.

SEC. 96. Every sheriff, or jailor, or person, who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and shall be removed from office.

SEC. 97. If any officer whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed or elected, or after he shall have resigned, or been legally removed from office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate or destroy, or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years. The provisions of this section shall apply to any person who shall have such records, documents, papers, or other writings, in his, her or their possession, and shall wilfully mutilate, destroy, withhold, or detain the same as aforesaid.

SEC. 98. Every person who shall falsely represent or personate another, and in such assumed character shall marry another, become bail or security for any party, in any proceeding civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or of any other instrument, which, by law, may be recorded, or do any other act in the course of any suit, proceeding or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sum of money, or his right or interest may, in any manner, be affected, shall, upon conviction, be punished by imprisonment in the territorial prison for a term not less than one year,

nor exceeding two years, or by fine not exceeding five thousand dollars.

SEC. 99. Every person who shall falsely represent or personate another, and, in such assumed character, shall receive any money, or valuable property of any description, intended to be delivered to the person so personated, shall upon conviction, be punished in the same manner, and to the same extent, as for feloniously stealing the money or property so received.

SEC. 100. If any person shall knowingly and willfully obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable, marshal, policeman or other officer of this territory, or other person duly authorized, in serving or attempting to serve any law process or order of any court, judge or justice of the peace, or any other legal process whatever; or shall assault or beat any such officer or person duly authorized, in serving or executing, or attempting to serve or execute, any order or process, as aforesaid, or for having served or executed, or attempting to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and punished (imprisoned) in the territorial prison for a term not less than one year, nor more than five years: *Provided*, Any officer or person whatsoever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

SEC. 101. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the territorial prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

SEC. 102. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offence, or crime punishable in the territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the territorial prison not less than one year, nor exceeding ten years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor

or other offence, punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

SEC. 108. If any sheriff, deputy sheriff or jailor, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor for more than ten years, and fined in a sum not exceeding ten thousand dollars.

SEC. 104. If any person shall carry to any convict imprisoned or in custody, or into any county jail, or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisoned in the territorial prison not less than one year, nor more than five years.

SEC. 105. If any person or persons shall rescue another in lawful custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

SEC. 106. If any person shall aid, or assist, a prisoner, lawfully imprisoned or detained in custody, for any offence against this territory, or who shall be lawfully confined, by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey, or cause to be delivered, to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner; any person so offending (although no escape or attempt to escape be actually made) shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisoned in the territorial prison not less than one year, nor more than five years.

SEC. 107. If any sheriff, coroner, jailor, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer, or permit, such prisoner to escape, or go at large, every such officer or person so offending shall, on conviction, be fined in any sum not exceeding five thousand dollars, and imprisoned in the territorial prison not less than one year, nor exceeding five years: *Provided*, That if such person be in cus-

today, charged with murder, or other capital offence, then such officer or person, suffering or permitting such escape, shall be punished by imprisonment in the territorial prison for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and he shall be imprisoned in the territorial prison for a term not less than one year, nor more than five years, or shall be fined in a sum not less than one thousand, nor exceeding five thousand dollars.

SEC. 108. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, such sheriff, coroner, jailor, constable, or other officer, so offending shall, on conviction, be fined in any sum not less than one thousand, nor more than five thousand dollars, and imprisoned in the territorial prison not exceeding five years.

SEC. 109. Every person having a knowledge of the actual commission of any offence, punishable by imprisonment in a county jail, or by fine, or of any misdemeanor, or violation of any statute, for which any pecuniary or other penalty is, or shall be prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor upon any agreement or understanding, express or implied, to compound or conceal any such offence or misdemeanor, nor (or) to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months; *Provided*, That this section shall not apply to those offences which may lawfully be compromised by leave of the court.

SEC. 110. If two or more persons shall conspire, either to commit any offence, or falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence, or falsely to move or maintain any suit, or to cheat or defraud any person of any property, by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretenses, or to cheat or defraud any person of any property, by any means which are in themselves criminal, or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for perversion or obstruction of justice, or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than six months, or by a fine of not more than one thousand dollars; *Provided*, That it shall not be necessary, to procure conviction under

this section, to prove any overt act done in pursuance of such conspiracy.

SEC. 111. If any person shall wilfully take upon himself to exercise or officiate in any office or place of another, in this territory, without being lawfully authorized thereto, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

SEC. 112. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, and the like. Every embracer, who shall directly or indirectly promise, or offer to any juror, or procure any juror to take money, or any other bribe, present, or reward, or any contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, or shall corruptly influence, or attempt to influence, any juror, shall, on conviction, be fined in a sum not exceeding five thousand dollars, or imprisoned in the territorial prison not less than one year, nor exceeding five years; and any juror convicted of taking any money, present, reward, or any other thing, or corruptly being influenced, as aforesaid, shall suffer the like imprisonment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as the trial jurors.

SEC. 113. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer, or assessor, of this territory, ministerial or judicial, shall wilfully receive or take any fee or reward to do or execute his duty as such officer, except such as is or shall be allowed by law; or, if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duties as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion; and, on conviction, shall be fined in any sum not less than two hundred dollars, and not more than one thousand dollars, and, on conviction, removed from office.

SEC. 114. If any justice of the peace, or constable of the same township, shall, directly or indirectly, purchase any judgment, or part thereof, on the docket of such justice, or any docket in his possession, he shall, upon conviction thereof, be fined in each offence in any sum not less than one hundred dollars, nor more than one thousand dollars.

SEC. 115. Every person holding or exercising any office, under the laws and constitution of this territory, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties

of such office, shall be deemed guilty of a misdemeanor; and, on conviction, shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office, and be disabled from holding such office; and every person who shall give, and make any agreement to give, any reward or gratuity, in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not less than five hundred, nor exceeding five thousand dollars.

SEC. 116. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill or murder, or to burn or destroy his house or other property; or to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities, though no money, goods, chattels or valuable thing be demanded, such person so offending shall, on conviction, be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

SEC. 117. Every person who shall wilfully open or read, or cause to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed; and every person who shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof or of the person to whom the same was addressed, knowing the same to have been opened, shall, upon conviction, be punished by fine not exceeding one thousand dollars.

IX.—OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILITY.

SEC. 118. Disturbing the peace, assembling to disturb, etc.

120. Affray, unlawful assemblage.

122. Rout, riot, disturbing religious meeting.

124. Liquor selling at camp meetings.

125. Officers not preventing duel.

126. Libel, truth to be given in evidence.

SEC. 118. If any person shall wilfully and maliciously disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive

conduct, threatening, traducing, quarreling, challenging to fight, or fighting; every person convicted thereof shall be fined in a sum not exceeding two hundred dollars or imprisonment in the county jail not exceeding two months.

SEC. 119. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse, on being desired or commanded so to do by a judge or justice of the peace, sheriff, coroner, constable or other public officer, the persons so offending shall, on conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

SEC. 120. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month.

SEC. 121. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assembly; and, upon conviction thereof, shall be fined severally in a sum not exceeding two hundred dollars, or imprisonment in the county jail not exceeding three months.

SEC. 122. If two or more persons shall meet to do an unlawful act upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a riot, and on conviction, shall be severally fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel, or even do an unlawful act in a violent, tumultuous and illegal manner, they shall be deemed guilty of a riot, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each, or by imprisonment in the county jail for any term of time not exceeding six months, or by both such fine and imprisonment.

SEC. 123. Every person who shall wilfully disquiet, or disturb any congregation, or assembly of people met for religious worship, by making a noise, or by rude and indecent behavior, or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Sec. 124. Every person who shall erect or keep a booth, tent, stall or other contrivance for the purpose of selling or otherwise disposing of any wine, or spiritous, or fermented liquors, or any drink of which wine, spirituous or fermented liquors form a part, within one mile, within any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars.

Sec. 125. If any judge, justice of the peace, sheriff or other officer bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

Sec. 126. A libel is a malicious defamation, expressed either by printing, or by signs, or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule; every person, whether the writer or publisher, convicted of the offence, shall be fined in a sum not exceeding five thousand dollars, or imprisonment in the county jail not exceeding six months. In all prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motive and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

X.—OFFENCES AGAINST PUBLIC MORALITY, HEALTH, AND POLICE.

Sec. 127. Bigamy.

128. Knowingly marrying a married person.

129. Incest, obstructing highway, or stream.

131. Selling unwholesome provisions.

132. Defacing or tearing down advertisements.

133. Possessing implements for burglary, carrying weapons with intent.

134. Refusing to join posse.

Sec. 127. Bigamy consists in having two wives, or two husbands, at one and the same time, knowing that the former

husband or wife is still alive. If any person or persons, within this territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the territorial prison not less than one year, nor more than five years. It shall not be necessary to prove either of the said marriages by the register, and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons, whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be, at the time of the second marriage, divorced by lawful authority from the bond of such former marriage, or to any person, when the former marriage hath been by lawful authority void.

SEC. 128. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another, such man or woman shall, upon conviction, be fined not less than one thousand dollars, or imprisoned in the territorial prison not less than one, nor more than two years.

SEC. 129. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the territorial prison not less than one, nor exceeding ten years.

SEC. 130. If any person shall obstruct or injure, or cause or to procure to be obstructed or injured, any public road or highway, or common, street or alley of any city, town or village, or any public bridge or causeway, mill-race, mill-dam or ditch, or public river or stream, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass; or shall erect or establish any offensive trade, manufacture or business, or continue the same after it has been erected or established; or shall in anywise pollute or obstruct any water-course, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same

offensive or unwholesome to the county, town, city, village or neighborhood thereabouts, every person so offending shall, upon conviction, be fined not exceeding one thousand dollars; and every such nuisance may, by order of the court before whom the conviction may take place, or of the district court, be removed and abated by the sheriff of the county.

SEC. 131. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any poisonous or adulterated drink or liquors, every person so offending shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months.

SEC. 132. If any person shall intentionally deface or obliterate, tear or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States, or of this territory, or any proclamation, advertisement or notification, set up at any place in this territory, by authority of any law of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars, nor less than twenty dollars, or be imprisoned in the county jail not more than one month: *Provided*, This section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, notification, advertisement or order, after the time for which the same was by law to remain set up shall have expired.

SEC. 133. If any person shall have found upon him or her any pick-lock, crow-key, bit, or other instrument or tool, with intent feloniously to crack and enter into any dwelling house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods and chattels, every person so offending shall, on conviction thereof, be imprisoned in the territorial prison for a term not less than one year, nor more than five years; and if any person shall have upon him or her any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

SEC. 134. Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may be issued any process, or by neglecting to aid and assist in retaking any person or persons who, after being arrested or

confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace or the commission of any criminal offence, being thereto lawfully required by the sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty, nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or by both such fine and imprisonment.

XI.—OFFENCES COMMITTED BY CHEATS, SWINDLERS AND OTHER FRAUDULENT PERSONS.

Sec. 135. Fraudulent conveyance.

136. Obtaining credit by false representations.

137. False pretenses, fraudulently selling.

139. False weights or measures.

140. Removal of property to defraud.

141. Fraudulent concealment of.

Sec. 135. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same; or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being parties as aforesaid, at any time, shall willingly, and willingly put in use, avow, maintain, justify or defend the same, or any of them, as true and done, had or made, in good faith, or upon good consideration, or shall alien, assign or sell any of the lands, tenements, hereditaments, goods, chattels or other things before mentioned, to him, her or them conveyed as aforesaid, or any part thereof, he, she or they so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not less than six months.

Sec. 136. If any person, by false representation of his own wealth or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing; or if any person shall cause or procure others to report falsely of his wealth or mercantile character, and by thus imposing upon

any person or persons, obtain credit, and thereby fraudulently get into the possession of goods, wares or merchandise, or other valuable thing, every such offender shall be deemed a swindler; and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisonment in the county jail not more than six months.

SEC. 137. If any person or persons shall, knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and on conviction, shall be fined not exceeding one thousand dollars, and imprisonment in the county jail not more than six months, and be sentenced so restore the property so fraudulently obtained, if it can be done.

SEC. 138. Any person or persons, after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or exacting any bond or agreement for the sale of any lands, or town lot or lots, who shall again, knowingly or fraudulently, sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly and fraudulently execute any bond or agreement to sell, or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the territorial prison not less than one year, nor more than five years.

SEC. 139. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and, on conviction, shall be fined not exceeding two hundred dollars, and imprisonment in the county jail not more than six months.

SEC. 140. If any debtor shall fraudulently remove his property or effects out of this territory, or shall fraudulently sell, convey, or assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of his just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

SEC. 141. Any person against whom an action is pending, or against whom a judgment has been rendered for the re-

covery of any personal property or effects, who shall fraudulently conceal, sell, or dispose of such property or effects, with intent to hinder, delay, or defraud the person bringing such action, or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of the commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

XII.—FRAUDULENT AND MALICIOUS MISCHIEF.

SEC. 142. Poisoning animals, injuring animals and goods.

144. Injuring dwelling houses, etc.

146. Injuring property of water companies.

147. Injuring jail, etc.

148. Firing woods or prairie.

SEC. 142. Every person who shall wilfully administer any poison to any cattle or domestic animal, or maliciously expose any poisonous substance, with the intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, upon conviction, be punished by imprisonment in the territorial prison not less than one year, nor exceeding three years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 143. Every person who shall maliciously kill, maim, or wound any horse, ox, or other domestic animal, belonging to another, or shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by fine of not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; and every person who shall wilfully, unlawfully, and maliciously destroy, burn, cut, or otherwise injure any goods, chattels, or property of any description whatever, belonging to another, shall, upon conviction, be punished by fine of not less than five hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment.

SEC. 144. Every person who shall wilfully, unlawfully and maliciously break, destroy or injure the door or window of any dwelling house, shop, store, or other house or building; or sever therefrom, or from any gate, fence or inclosure, any

part thereof, or any material of which it is formed; or sever from the freehold any produce thereof, of anything attached thereto; or pull down, injure or destroy any gate, post, railing or fence, or any part thereof; or cut down, lap, girdle or otherwise infuse or destroy any fruit, or ornamental, or shade tree, being the property of another, shall, on conviction, be fined not more than two hundred dollars, or imprisoned in the county jail not exceeding six months.

SEC. 145. Every person who shall wilfully and maliciously burn, infuse or destroy any pile or raft of wood, plank, boards or other lumber, or any part thereof, or cut loose or set adrift any such raft, or part thereof; or shall cut, break, infuse, sink or set adrift any boat, canoe, skiff, or other vessel or watercraft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

SEC. 146. Every person who shall wilfully and maliciously cut, break, injure or destroy any bridge, mill-dam, canal, flume, aqueduct, reservoir or other structure, erected to create hydraulic power, or to conduct water for mining, manufacturing or agricultural purposes, or any embankment necessary to the same, or either of them; or shall wilfully or maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisonment in the territorial prison not less than one year, nor more than two years, or both such fine and imprisonment.

SEC. 147. If any person shall, wilfully and intentionally, break down, pull down or otherwise destroy, injure, in whole or in part, any public jail or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of the said jail or other place of confinement so destroyed or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the territorial prison for any term not exceeding five years, nor less than one year.

SEC. 148. If any person or persons shall wilfully and intentionally, or negligently and carelessly, set on fire, or cause or procure to be set on fire, any wood, prairies, grass or other lands or grounds in this territory, every person so offending shall, on conviction before any court of competent jurisdiction, be fined in any sum not less than two hundred, nor more than one thousand dollars, or by imprisonment in the county jail not less than ten days, nor more than six months, or by

both such fine and imprisonment, in the discretion of the jury trying the case: *Provided*, That this section shall not extend to any person or persons who shall set on fire any wood, prairies, grass or other lands adjoining to their own farm, house, plantation or inclosure, for the necessary preservation thereof from accident or injury by fire, by giving to his, her or their neighbors reasonable notice of such intention.

XIII.—MISCELLANEOUS OFFENCES.

Sec. 149. Issuing paper money, district attorney to prosecute.

150. Vending without license, jurisdiction of offence, fines.

Sec. 149. If any person or persons, association, company or corporation shall make, issue or put in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company or corporation, or the persons forming the same, shall, for the first offence, be deemed guilty of a misdemeanor, and for each and every subsequent offence, be deemed guilty of felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this act, shall be punished, for the first offence, by imprisonment in the county jail not more than three months, or by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second and every subsequent offence, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years, at the discretion of the court before whom such person or persons may be tried and convicted. It shall be the duty of the district attorney for each judicial district in the territory, to prosecute all offences against this act; and it shall be the duty of the judge of the courts to give this law in the charge of the grand jury, who shall inquire into and present all violations thereof.

Sec. 150. Any person or persons who shall vend, by wholesale or retail, any spirituous, or malt, or vinous liquors, or any goods, wares or merchandise, within any county of this territory, without first obtaining a license so to do, as required by law, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, in any court of competent jurisdiction, be fined in a sum of not less than twenty-five, nor more than two

hundred dollars, for each and every offence. Any justice of the peace of the county in which such offence is charged to have been committed shall have jurisdiction to try and determine the same. Upon the trial of any criminal action provided for by this act, the defendant shall be deemed not to have procured any such license, unless he prove the contrary to the satisfaction of the court or jury by whom the same is tried. All fines collected under this act shall be paid into the treasury of the county in which the conviction is had.

XIV.—GENERAL PROVISIONS.

Sec. 151. Offences, misdemeanor, how punished.

152. Territorial prison, effect of sentence of.

154. Person defined, females.

156. Intent to injure, reward for arrests.

158. Attempt to commit offences.

159. Not to affect pending proceedings.

Sec. 151. All offences recognized by the common law as crimes, and not here enumerated, shall be punished, in case of felony, by imprisonment in the territorial prison for a term not less than one year, nor more than five years; and in case of misdemeanors, by imprisonment in the county jail for a term not exceeding six months, or less than one, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. And whenever any fine is imposed by any felony or misdemeanor, whether such be by statute or at common law, the party upon whom the fine is imposed shall be committed to the county jail, when not sentenced to the territorial prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars, until such fine is paid.

Sec. 152. Until a territorial prison is provided, the county jail of each county shall be deemed the territorial prison.

Sec. 153. A sentence of imprisonment in the territorial prison, for a term less than life, suspends all civil rights of the persons sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority and powers; and the person sentenced to such imprisonment for life, shall thereafter be deemed civilly dead.

Sec. 154. When the term "person" is used in this act to designate the party whose property may be the subject of any

offence, such term shall be construed to include the United States, this territory or any other state or territory, government, or county, which may lawfully own any property within this territory, and all public and private corporations, as well as individuals.

SEC. 155. The provisions of this act shall extend to females.

SEC. 156. When any intent to injure, defraud, or cheat, is required by law to be shown in order to constitute any offence, it shall be sufficient if such intent be to injure, defraud, or cheat, the United States, this territory, or any other state, territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individual.

SEC. 157. If any person, who has been sentenced to confinement in the territorial prison by any court having competent authority within this territory, shall escape therefrom, or shall be charged with murder, the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or her apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the territorial treasury.

SEC. 158. Every person who shall attempt to commit a public offence, and in such attempt shall do any act toward the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows: First. If the offence so attempted to be committed be such as is punishable by death, or by imprisonment in the territorial prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the territorial prison not exceeding ten years. Second. If the offence so attempted is a misdemeanor, the person so convicted of such attempt shall be punished by a fine not exceeding one-half of the largest amount, or by imprisonment in the county jail or territorial prison, as the case may be, for a term not exceeding one-half of the longest time prescribed by law upon a conviction of the offence so attempted. Third. If the offence so attempted is a felony, not punishable by death, or imprisonment which may extend to life, the person convicted of such offence shall be punished by imprisonment in the territorial prison for a term not exceeding one-half the longest time which may be imposed upon a conviction of the offence so attempted.

SEC. 159. Nothing in this act shall be construed to affect

any criminal proceedings or prosecution now pending in any of the courts of this territory, but the same shall be prosecuted to judgment and execution in the same manner as if the act had not been passed, and all persons charged, or who may hereafter be charged, with crimes or misdemeanors under the laws now in force, shall be prosecuted to the same extent that they might have been had no act on the subject been passed.

SEC. 160. This act shall take effect from and after its passage.

APPROVED, February 4th, 1864.

COUNTY OFFICERS, ETC.

AN ACT relating to County Officers, etc.

- SEC. 1. Sheriff, duties of.
5. Reception of papers, copy, etc.
 6. Return of, to proper court.
 7. Papers returnable out of county, how made.
 8. When sheriff liable for neglect of duty.
 9. Neglect to pay over, penalty for.
 10. Where office to be kept, when to be kept open.
 12. How papers to be served on sheriff.
 13. Sheriff shall appoint under sheriff, shall be in writing, etc.
 15. Duties and power of under sheriff.
 16. Misconduct or neglect, breach of bond.
 17. County jail kept by sheriff, may appoint keeper.
 19. County commissioners to provide safe keeping for prisoners.
 20. Prisoners to be kept apart from each other.
 21. Probate judge may designate when county has no jail.
 22. Appointment, copy to be served on sheriff of county designated.
 23. Probate to revoke when jail erected.
 24. County clerk shall serve copy on sheriff.
 25. Prisoners to be removed when jail on fire.
 26. Contagious diseases, probate judge may order removal.
 27. Physicians, who to appoint, sheriff, when liable to prisoner.
 29. Temporary guard, expense of.
 30. Food, clothing, etc., provided by sheriff.
 31. Security may be required when defendant imprisoned in civil cases.

- SEC. 32. Prisoner committed for examination to be actually confined, etc.
33. Escape of prisoner, etc., who shall be liable; rescue of.
35. Return of prisoner to jail, no cause of action against sheriff.
36. County clerk to issue certificate to new sheriff, etc.
37. Former sheriff deliver to new sheriff county property, prisoners, etc.
38. Written transfer specifying, new sheriff to acknowledge, etc.
39. Former sheriff shall complete processes begun.
40. New sheriff may take possession when former sheriff refuse.
41. Commitment under authority of the United States.
43. Resistance, officer may call assistance.
45. Direction to sheriff must be in writing to excuse liability.
46. Sheriff committed to custody of coroner, etc.
47. Officer required to perform service for territory.
48. Justification of officer in execution of process when defect in.
49. Officer bound to show papers to interested party.
50. Sheriff to act as crier to court, etc.
51. Sheriff not to have attorney for partner.
52. When sheriff liable to party injured.
53. Wilful negligence or oppression, fine, etc.
54. When sheriff party to action, vacancy in office of sheriff coroner to act.
56. Power of coroner, when sheriff and coroner, both parties.
58. Elisor, powers and duties of.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. There shall be a sheriff in each of the counties of this territory, to be elected every two years, in accordance with, and in the manner provided by law.

SEC. 2. Before entering upon the discharge of his duties, each sheriff shall take the oath prescribed by law, and give a bond to the territory for the faithful discharge of the duties of his office. The penalty of the bond shall be given as follows: In the counties of Boise and Madison, the sum of twenty thousand dollars; in all other counties, the sum of ten thousand dollars.

SEC. 3. The sheriff shall be a conservator of the peace in his county.

SEC. 4. It shall be the duty of the sheriff within his county: First. To arrest and take before the nearest magistrate, for examination, all persons who commit, or attempt to commit, a public offence in his presence, or who have committed a public offence. Second. To prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge. Third. To execute the process, warrants and orders of the courts of justice, or of judicial officers, when delivered to him for that purpose. Fourth. To attend in per-

son or by deputy all courts, except justices' and probate courts, at their respective terms held within his county, and to obey their lawful orders and directions. Fifth. To serve, at the request of a party to an action or proceeding, notices and papers therein. Sixth. In the execution of these duties, to command the aid of as many male inhabitants of his county as he may think proper and necessary.

SEC. 5. When any process, writ or order shall be delivered to the sheriff, to be executed, he shall endorse upon it the year, month, day and hour of its reception, and shall give to the person delivering it, if required, on payment of his fee, a written memorandum, signed by him, specifying the names of the parties in the process, writ or order, the general nature thereof, and the time it was received. He shall also deliver to the party served a copy thereof, without charge to such party.

SEC. 6. A sheriff, to whom any process, writ or order, or paper, shall be delivered, shall execute it with diligence, according to its command or as required by law, and shall return it, without delay, to the proper court or officer, with his certificate endorsed thereon of the manner of its service or execution; or if not served or executed, the reason of his failure. For a failure to do so, he shall be liable, in an action, to the party aggrieved, for the sum of two hundred dollars, and for all damages sustained by him.

SEC. 7. When any process, writ, order or paper is to be returned to a court, officer or person out of the county, the sheriff may forward it by mail; and on proof that it was mailed in season, properly directed, he shall be discharged from liability for a failure to return it.

SEC. 8. If the sheriff to whom a writ of execution is delivered shall neglect or refuse, after being requested by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ, which is liable to be levied upon and sold, he shall be liable on his official bond to the creditor for the value of such property.

SEC. 9. If a sheriff shall neglect or refuse to pay over, on demand, to the person entitled, any money which may come into his hands, by virtue of his office, after deducting his legal fees, the amount thereof, with twenty-five per cent. damages, and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person from him and the sureties on his official bond, on application, upon five days' notice to the court in which the action is brought, or the judge thereof, in vacation.

SEC. 10. The sheriff shall keep an office at the county seat of his county.

SEC. 11. The sheriff's office shall be kept open on all days except Sundays, between the hours of nine and twelve in the forenoon, and between one and four in the afternoon.

SEC. 12. Service of a paper upon the sheriff may be made by delivering it to himself in person, or by delivering it to the under sheriff, or to one of his deputies, or to a person belonging to and in the office during office hours; or if no such person be there, by leaving it in a conspicuous place in the office.

SEC. 13. Each of the present sheriffs, within thirty days after the passage of this act, and each sheriff hereafter elected, immediately after entering upon the duties of his office, shall appoint one under sheriff, to hold the office during his pleasure, and shall make a similar appointment as often as a vacancy occurs in the office of under sheriff; he may also appoint as many deputies as he thinks proper, to hold them in office during his pleasure.

SEC. 14. The appointment of an under sheriff and a deputy sheriff, and also the revocation of any such appointment, shall be in writing, and filed in the office of the county clerk. The sheriff may require of each person appointed under sheriff, and of each of his deputies, a bond, with sureties, for the faithful performance of his duties; but the sheriff shall be responsible for the official acts of the under sheriff and his deputies. Before entering upon their respective duties, the under sheriff and each of his deputies shall take the oath prescribed by law, which shall be endorsed on their respective appointments.

SEC. 15. During the absence of the sheriff from his county, or when the sheriff, from sickness, or any other cause, is unable to discharge the duties of his office, the under sheriff shall exercise the powers, and perform the duties of that officer, and at other times shall perform such services, relating to the duties of the sheriff, as may be required of him by that officer. A deputy sheriff shall execute all orders, writs, and process of a court, or judicial officer, delivered to him for that purpose, and may perform every act incidental thereto.

SEC. 16. The neglect or misconduct in office, of the under sheriff, or any deputy, shall be a breach of the official bond of the sheriff by whom they were appointed.

SEC. 17. The county jail shall be kept by the sheriff, and used as a prison—First. For the detention of persons committed as witnesses in a criminal action. Second. For the detention of prisoners committed for trial for a public offence. Third. For the confinement of persons committed upon civil

process; and Fourth. For the confinement of persons sentenced to imprisonment therein, upon conviction for a public offence, or for examination, charged with having committed a public offence.

SEC. 18. The sheriff may appoint a keeper of the county jail for whose acts, as such, he shall be responsible.

SEC. 19. The county commissioners of each county shall cause a county jail to be erected at the county seat, in case such jail has not been already erected, or shall provide some suitable place for the safe keeping of prisoners, which place, until the erection of a jail, is considered, in this act, as the county jail. The county jail, or the place provided as such, shall contain a sufficient number of rooms: First. For the confinement of persons committed for trial in criminal actions, separate and distinct from persons under sentence. Second. For the confinement of persons under sentence. Third. For the confinement of persons committed on civil process, or as witnesses in criminal actions, separate from those mentioned in the last two subdivisions.

SEC. 20. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, shall, on no pretence whatever, be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

SEC. 21. Where there is no jail in the county, or where the jail becomes unfit or unsafe for the confinement of prisoners, the probate judge may, by a written appointment filed with the county clerk, designate the jail of a contiguous county, for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

SEC. 22. A copy of the appointment, certified by the county clerk, shall be served on the sheriff and keeper of the jail designated, who shall receive into his jail and safely keep all prisoners authorized to be confined therein, pursuant to the last section, and who shall be responsible for the safe keeping of the persons so committed, in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he shall be deemed the sheriff of the county from which they were received.

SEC. 23. When a jail shall be erected in the county for whose use the designation was made, or its jail shall be rendered fit and safe for the confinement of prisoners, the probate judge of that county shall, by a written revocation filed with

the county clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked.

SEC. 24. The county clerk shall immediately serve a copy of the revocation upon the sheriff of his county, who shall thereupon remove his prisoners to his own jail.

SEC. 25. When a county jail, or a building contiguous to it, is on fire and there is reason to apprehend that the prisoners may be injured, or endangered, the sheriff, or jailor, shall remove them to a safe and convenient place, and there confine them so long as it may be necessary to avoid the danger.

SEC. 26. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the probate judge may, by a written appointment, designate a safe and convenient place in the county, or the jail of a contiguous county, as the place of their confinement. The appointment shall be filed in the office of the county clerk, and shall authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

SEC. 27. The county commissioners of each county shall, from time to time, appoint a physician to the jail of the county.

SEC. 28. A sheriff or jailor upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, shall forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so, he shall be liable to the prisoner for all damages occasioned thereby, and for a wilful omission in this respect shall be deemed guilty of a misdemeanor.

SEC. 29. The sheriff, when he shall deem it necessary, may, with the assent in writing of the probate judge, or, in a city, of the mayor thereof, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which shall be a county charge.

SEC. 30. The sheriff shall receive all prisoners committed to jail, by any competent authority; and shall provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the county commissioners, and, except as provided in the next section, paid out of the county treasury.

SEC. 31. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this territory are a party thereto, the sheriff shall not be bound to receive such person unless security be given on the part of the

party at whose instance the process is issued, by a deposit of money to meet the expenses for him of necessary food, clothing, and bedding; or to detain such person any longer than these expenses are provided for. This section shall not apply, however, to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of the court.

SEC. 32. A prisoner committed to the county jail for trial or examination, or upon conviction for a public offence, shall be actually confined in the jail until he is legally discharged; and if he be permitted to go at large out of the jail, except by virtue of a legal order or process, it shall be an escape, and the sheriff, or jailor permitting it shall be deemed guilty of a misdemeanor, and may be fined in any sum not exceeding ten thousand dollars.

SEC. 33. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, shall be liable as follows: First. When the arrest is upon an order to hold to bail, or upon a surrender in exoneration of bail before judgment, he shall be liable to the plaintiff as bail. Second. When the arrest is on execution, or commitment to enforce the payment of money, he shall be liable for the amount expressed in the execution, or commitment. Third. When the arrest is on an execution or commitment other than to enforce the payment of money, he shall be liable for the actual damages sustained. Fourth. The sheriff, upon being sued for damages for an escape, may exhibit proofs in mitigation and exculpation.

SEC. 34. The sheriff shall be liable for a rescue of a person, arrested in a civil action, equally as for an escape: *Provided*, He may show circumstances in exculpation.

SEC. 35. An action shall not, however, be maintained against the sheriff, for a rescue, or for an escape of a person arrested upon an execution or commitment, if after his rescue or escape, and before commencement of the action, the prisoner return to the jail, or be retaken by the sheriff.

SEC. 36. When a new sheriff is elected and has qualified, and given the security required by law, the county clerk shall give a certificate of that fact under his seal of office, upon the service of which on the former sheriff his powers shall cease, except as otherwise provided in this act.

SEC. 37. Within three days after the service of the certificate upon the former sheriff, he shall deliver to his successor: First. The jail of the county, with its appurtenances, and the property of the county therein. Second. The prisoners then

confined in the county jail. Third. The process, orders and other papers in his custody, authorizing or relating to the confinement of the prisoners. Fourth. All process and orders for the arrest of a party, and all papers relating to the summoning of a grand or trial jury, which have not been fully executed. Fifth. All executions, attachments, and final process, except those which he has executed or has begun to execute, by the collection of money or a levy on property.

SEC. 38. He shall also, at the same time, deliver to the new sheriff, a written transfer of the property, process, papers, and prisoners delivered, specifying the process or order by which each prisoner delivered was committed and detained. The new sheriff shall thereupon acknowledge, in writing, a duplicate of the transfer, the receipt of the property, process, papers, and persons therein specified.

SEC. 39. Notwithstanding the election and qualification of a new sheriff, the former sheriff shall return all process and orders before and after judgment, which he has fully executed, and shall complete the execution of all final process which he has begun to execute, and the collection of all taxes put into his hands for collection previous to the expiration of his term of office.

SEC. 40. If the former sheriff refuse or neglect to deliver to his successor the jail, process, papers, and prisoners in his charge, the new sheriff may, notwithstanding, take possession of the jail, and of the prisoners confined therein, and the probate court, or the probate judge, may, upon application, order the delivery of the process and papers.

SEC. 41. The sheriff shall receive and keep in the county jail, any person who shall be committed thereto by process or order issued under the authority of the United States, until he be discharged according to law, as if he had been committed under process issued under the authority of this territory, provided provision be made by the United States for the support of such prisoner.

SEC. 42. A sheriff or jailor to whose custody a prisoner is committed, as provided in the last section, shall be answerable for his safe keeping, in the courts of the United States, according to the laws thereof.

SEC. 43. When an officer finds, or has reason to apprehend, that resistance will be made to the execution of process, delivered to him for service, he may command as many male inhabitants as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in

seizing, arresting and confining the resisters, their aiders and abettors, to be punished according to law.

SEC. 44. Every able-bodied male person over the age of eighteen, and under the age of sixty, commanded by an officer to assist him in the execution of process, as provided in the preceding section, who, without lawful cause, refuses or neglects to obey the command, may be fined by the court, upon proof thereof, in a sum not exceeding two hundred dollars.

SEC. 45. No direction or authority by a party or his attorney to a sheriff or to an under or deputy sheriff in respect to the execution of process, or return thereof, or to any act or omission relating thereto, shall be available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it be contained in a writing signed by the party to be charged or affected thereby, or his attorney.

SEC. 46. When the sheriff is committed to the custody of another sheriff, or of a coroner, under an execution or commitment for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office shall be declared vacant.

SEC. 47. When the sheriff or other officer is legally required to perform a service in behalf of the people of this territory, which is not chargeable to his county or a private person, his account therefor shall be audited by the territorial auditor, and shall be paid by the territorial treasurer.

SEC. 48. A sheriff or other ministerial officer shall be justified in the execution of all process and orders, regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

SEC. 49. The officer executing a process, warrant or order of any kind, shall be bound then and at all times subsequent, so long as he retains it, upon request, to show the same, with all papers attached, to any person interested therein.

SEC. 50. The sheriff or deputy in attendance upon court shall act as the crier thereof, to call the parties and witnesses and all other persons bound to appear at the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

SEC. 51. A sheriff, under or deputy sheriff, is prohibited, during his continuance in office, from acting or having a partner who acts as an attorney or counsellor.

SEC. 52. Every sheriff shall be liable to the party injured, on his official bond, for neglect or mal-performance of any duty imposed upon him by law.

SEC. 53. Every sheriff who is guilty of wilful negligence in the discharge of his duties, or who, in the execution or un-

der color of his office, is guilty of any oppression or extortion, shall, upon conviction thereof, be fined in a sum not exceeding five thousand dollars, and may be removed from office.

SEC. 54. When the sheriff is a party to an action or special proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, shall, except when otherwise provided by this act, be executed by the coroner of the county.

SEC. 55. In case of a vacancy in the office of sheriff, the process and the duties of sheriff shall devolve upon the coroner and be executed by him, until a new sheriff be appointed or elected and qualified, and has given security, to be approved as required by law.

SEC. 56. Whenever a coroner acts as sheriff, he shall be invested with the powers, duties and responsibilities of the sheriff, and shall be entitled to the same fees for similar services.

SEC. 57. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the court, the judge thereof, or a probate judge, and denominated an elisor, in the following cases: First. When the sheriff and coroner are both parties. Second. When either of these officers is a party, and the process or orders are against the other, for a disobedience of an order or process therein. Third. When either of these officers is a party, and there is a vacancy in the office of the other; or when it shall be made to appear, by affidavit, to the satisfaction of the court in which the suit or proceeding is pending, or the judge thereof, that either of the said officers, by reason of any bias, prejudice, or other cause, would not act promptly and impartially.

SEC. 58. When process is delivered to an elisor, he shall execute in the same manner as the sheriff is required to execute similar process in other cases.

SEC. 59. If the sheriff, on being arrested by a coroner, or if the sheriff, or coroner, on being arrested by an elisor, or if another person, on being arrested in action in which both the sheriff and coroner are plaintiffs, upon an order of arrest in a civil action, neglect to give bail, or make a deposit of money instead thereof, or if he be arrested on execution against his body, or on a warrant of attachment, he shall be confined in a house other than that of the sheriff, or the county jail, in the same manner as the sheriff is required to confine a prisoner in the county jail; the house in which he is thus confined shall thereupon become for that purpose the county jail.

SEC. 60. An elisor appointed to execute process and orders

in the cases mentioned in this act, shall be invested with the powers, duties, and responsibilities of the sheriff, in the execution of the process, or orders, and in every matter incidental thereto.

FEEES.

SEC. 61. For serving a summons and complaint, or any other process, by which action or proceeding is commenced, on every defendant, two dollars. For traveling in making such service, per mile, in going only, to be computed in all cases from the court house of the county, seventy-five cents: *Provided*, That if any two or more papers, required to be served in the same suit, at the same time, one mileage only shall be charged. For taking bond or undertaking, in any case in which he is authorized to take the same, two dollars. For copy of any writ, process, or other paper, when demanded, or required by law, for each folio, thirty cents. For serving every notice, rule, or order, one dollar. For serving a subpoena, for each witness summoned, fifty cents. For traveling, per mile, in serving each subpoena, or venire, in going only, but when two or more witnesses or jurors live in the same direction, traveling fees shall be charged only for the most distant, seventy-five cents. For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, and with traveling fees as on a summons, three dollars. For serving an attachment upon any ship, boat, or vessel, in proceedings to enforce any lien thereon, created by law, five dollars. For making and posting notices, and advertising property for sale, on execution or under any judgment or order of sale, not to include the cost of publication in newspapers, three dollars. For commissions for receiving and paying over moneys on execution or process, when land or personal property has been levied on, advertised or sold, on the first one thousand dollars, four per cent.; on all sums above that amount, two per cent. For commission for receiving and paying over money, on execution without levy, or when the land or goods levied on shall not be sold, three per cent. on the first one thousand dollars, and two per cent. on all over that sum. The fees herein allowed for the levy of an execution, and for advertising, and for making or collecting the money on an execution, shall be collected from the defendant, by virtue of such execution, in the same manner as the sum therein directed to be made. For drawing and executing every sheriff's deed, to be paid for by the grantee, who shall in addition pay for the acknowledgments thereof, five dol-

lars. For serving a writ of possession or restitution putting any person entitled into possession of premises, and removing the occupant, five dollars. For travel in the service of any process not hereinbefore mentioned, for each mile necessarily traveled in going only, seventy-five cents. For attending, when required, on any court, in person or by deputy, for each day, to be paid out of the county treasury, six dollars. For bringing up a person on *habeas corpus* to testify or answer in any court, or for examination as to the cause of his arrest and detention, or to give bail, two dollars. He shall also be allowed such further compensation for his trouble and expenses in taking possession of property under the attachment or execution, or other process, and of preserving the same, as the court from which the suit or order may issue, shall certify to be just and reasonable. For holding each inquest or trial of right of property, when required, to include all service in the matter, except mileage, five dollars. For attending on supreme court, either in person or by deputy, to be paid out of the territorial treasury as other claims, for each day, six dollars. For making every arrest in a criminal proceeding, three dollars. For serving each subpoena in criminal proceedings, fifty cents. For executing every sentence of death, one hundred dollars. For summoning a grand jury of twenty-four, fifteen dollars. For summoning each trial jury of twelve persons, six dollars. For each additional juror, fifty cents. For service of any process in criminal cases, for each mile necessarily traveled, thirty cents, and the same mileage for taking prisoners before a magistrate as to prison. In serving subpoenas or venires in criminal cases, he shall receive mileage for the most distant only, when witnesses or jurors live in the same direction. For all service in justices' courts, the same fees allowed to constables.

COUNTY RECORDER AND AUDITOR.

- Sec. 62. Recorder, style of, each county to have.
- 63. When to be kept open, suitable books to be kept.
- 65. Recorder shall execute bonds and take oath of office.
- 66. To be responsible for acts of deputy.
- 68. Deputy to act in case of vacancy or absence.
- 69. County commissioners to settle recorders' accounts.
- 70. Duties of recorder defined.
- 71. Separate books for different classes of instruments to be kept.

- SEC. 73. One or more index to same book, how kept, etc.
74. Duty of recorder when papers are left for record.
75. Indorsment on papers refering to book of record.
76. Searches of record and certificate.
77. Neglect of duties, penalty for.
79. Transcripts from books and copies of papers certified by recorder.
80. Books, maps, charts, etc., to be kept open for inspection.
81. County commissioners to appoint to fill vacancy.
82. Books, papers, etc., to be delivered to successor.
83. Authority to take acknowledgment and proof of instruments.
84. When not bound to record instrument.
85. Recorders *ex-officio* county auditors.
86. Auditor shall keep account with treasurer and file receipt.
87. Auditor shall examine and settle accounts against county.
88. Orders to be numbered progressively and entered in book.
89. When to make settlement with county treasurer.

SEC. 62. There shall be an office of recorder in each county of this territory, to be styled the recorder's office, which shall be at the county seat of each county.

SEC. 63. The office of recorder shall, in all the counties in this territory, be kept open for the transaction of business every day in the year, except Sundays, Christmas, New Years, and the Fourth of July, between the hours of nine and twelve in the forenoon, and one and four in the afternoon.

SEC. 64. The recorder shall keep suitable and well bound books, wherein shall be recorded in a fair, large and legible hand, all instruments of writing authorized and required to be recorded.

SEC. 65. Before entering upon the duties of their offices, the recorders shall take the oath of office, as prescribed by law, and shall enter into bonds in the penal sum of not less than five, nor more than thirty thousand dollars, at the discretion of the county commissioners of the respective counties, with two or more sureties, to be approved by said county commissioners, conditional for the faithful performance of their duties as recorders.

SEC. 66. The bonds of the recorders of the different counties of this territory shall be filed with the clerks of those counties respectively.

SEC. 67. The recorder of each county may appoint a deputy, who shall hold his office during the pleasure of the recorder. Such appointment shall be in writing, filed and recorded in the office of the recorder; and the recorder so appointing him, and his sureties, shall be responsible for the faithful performance of his duties by such deputy.

SEC. 68. In case of a vacancy in the office of recorder, or

his absence or inability to perform the duties of his office, the deputy shall perform the duties of recorder during the continuance of such vacancy, absence or inability.

SEC. 69. It shall be the duty of the board of county commissioners to audit and settle the accounts of the recorders of their respective counties, for books purchased for the use of their offices, and to allow such sums as may be just as rent for their offices; provided suitable rooms be not provided by the different counties. The recorders shall have the custody of, and shall safely keep and preserve all the books, records, maps and papers deposited in their offices.

SEC. 70. It shall be the duty of the recorders, upon the payment of their fees for the same, to record, or cause to be recorded, correctly, in large and strongly bound books, and in a fair, large and legible hand—First. All deeds, mortgages on real estate, releases of mortgages, powers of attorney to convey real estate, and leases for a longer period than one year, which shall have been proved or acknowledged according to law. Second. All certificates of marriage and marriage contracts. Third. All wills admitted to probate. Fourth. All official bonds required by law to be recorded in their offices. Fifth. All notices of mechanics' liens. Sixth. All transcripts of judgments which, by law, are made liens upon real estate. Seventh. All notices of attachments upon real estate. Eighth. All notices of the pendency of an action affecting real estate. Ninth. All instruments describing or relating to the separate property of married women. Tenth. All notices of pre-emption claims.

SEC. 71. The several classes of instruments of writing mentioned in the several subdivisions of the preceding section shall be recorded in separate books.

SEC. 72. Every recorder shall keep in separate volumes—First. An index of deeds, labeled grantors, each page of which shall be divided into four columns, with heads to the respective columns, as follow: Names of grantors, names of grantees, date of deeds, where recorded. Second. An index of deeds, labeled grantees, each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of grantees, names of grantors, date of deeds, when recorded. Third. An index of mortgages, labeled mortgagors, each page of which shall be divided into five columns, with heads to the respective columns, as follows: Names of mortgagors, names of mortgagees, date of mortgages, where recorded, when discharged. Fourth. An index of mortgages, labeled mortgagees, each page of which shall be divided into five columns, with heads to the respective col-

umns, as follows: Names of mortgagees, names of mortgagors, date of mortgages, where recorded, when discharged. Fifth. An index of releases of mortgages, labeled releases of mortgages—mortgagors, each page of which shall be divided into six columns, with heads to the respective columns, as follows: Parties releasing, to whom releases are given, date of releases, where releases are recorded, date of mortgages released, where mortgages released are recorded. Sixth. An index of releases of mortgages, labeled releases of mortgages—mortgagees, each page of which shall be divided into six columns, with heads to the respective columns, as follows: Parties whose mortgages are released, parties releasing, date of releases, when recorded, date of mortgages released, where mortgages released are recorded. Seventh. An index of powers of attorney, labeled powers of attorney, each page of which shall be divided into five columns, with heads to the respective columns, as follows: Names of parties executing the powers, to whom powers are executed, date of powers, date of recording, where powers are recorded. Eighth. An index of leases, labeled lessors, each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of lessors, names of lessees, date of leases, when and where recorded. Ninth. An index of leases, labeled lessees, each page of which shall be divided into four respective columns, as follows: Names of lessees, names of lessors, date of leases, when and where recorded. Tenth. An index of marriage certificates, labeled marriage certificates—men, each page of which shall be divided into six columns, with heads to the respective columns, as follows: Men married, to whom married, when married, by whom married, where married, where certificates are recorded. Eleventh. An index of marriage certificates, labeled marriage certificates—women, each page of which shall be divided into six columns, with heads to the respective columns, as follows: Women married (under this head placing the names of the women), to whom married, when married, by whom married, where married, where certificates are recorded. Twelfth. An index of assignments of mortgages and leases, labeled assignments of mortgages and leases—assignors, each page of which shall be divided into five columns, with heads to the respective columns, as follows: Assignors, assignees, instruments assigned, date of assignment, when and where recorded. Thirteenth. An index of assignments of mortgages and leases, labeled assignments of mortgages and leases—assignees, each page of which shall be divided into five columns, with heads to the respective columns, as follows: Assignees, assignors,

instruments assigned, date of assignments, when and where recorded. Fourteenth. An index of wills, labeled wills, each page of which shall be divided into four columns, with heads to the respective columns, as follows: Names of testators, date of wills, date of probate, when and where recorded. Fifteenth. An index of official bonds, labeled official bonds, with each page divided into five columns, with heads to the respective columns, as follows: Names of officers, names of offices, date of bonds, amount of the bonds, when and where recorded. Sixteenth. An index of notices of mechanics' liens, labeled mechanics' liens, with each page divided into three columns, with heads to the respective columns, as follows: Parties claiming liens, against whom claimed, notices when and where recorded. Seventeenth. An index to transcripts of judgments, labeled transcripts of judgments, with each page divided into seven columns, with heads to the respective columns, as follows: Judgment debtors, judgment creditors, amount of judgments, where recorded, when recorded, when transcript filed, when judgment satisfied. Eighteenth. An index of attachments, labeled attachments, with each page divided into five columns, with heads to the respective columns, as follows: Parties against whom attachments are issued, parties issuing attachments, notices of attachments, when recorded, where recorded, when attachments discharged. Nineteenth. An index of notices of the pendency of actions, labeled notices of actions, with each page divided into three columns, with heads to the respective columns, as follows: Parties to the actions, notices when recorded, where recorded. Twentieth. An index of the separate property of married women, labeled separate property of married women, with each page divided into five columns, with heads to the respective columns, as follows: Names of married women, names of their husbands, nature of instruments recorded, when recorded, where recorded. Twenty-first. An index of pre-emption claims, labeled pre-emption claims, with each page divided into four columns, with heads to the respective columns, as follows: Claimants, notices when received, date of notices, when and where recorded.

SEC. 73. But the recorder may, in his discretion, keep in the same volume, any two or more of the indexes mentioned in section seventy-two of this act: *Provided*, The several indexes be kept distinct from each other, and the volume be distinctly marked, on the outside, in such way as to show all the indexes kept therein. The names of the parties in the first column of the several indexes, shall be arranged in alphabetical order; and when a conveyance is executed by a sheriff,

the name of the sheriff, and the party charged in the execution, shall both be inserted in the index; and when an instrument is recorded, to which an executor or administrator, or trustee, is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, shall be inserted in the index.

SEC. 74. When any instrument, paper, or notice, authorized by law to be recorded, shall be deposited in the recorder's office for record, the recorder, or his deputy, shall endorse upon the same, the time when it was received, noting the year, month, day, hour and minute, of its reception, and shall record the same, or cause the same to be recorded, without delay, together with the acknowledgements, proofs, and certificates, written over or under the same, with the plats, surveys, schedules, and other papers thereto annexed, in the order and as of the time when the same was delivered for a record, in a fair and a large and legible hand, and shall note at the foot of the record, the year, month, day, hour, and minute, of its reception, and the name of the person at whose request it was recorded.

SEC. 75. The recorder shall endorse upon each instrument, paper, and notice, the book, and page or pages of the book, in which it is recorded, and the year, month, day, hour, and minute, when received; and after the same is recorded, shall deliver it, upon request, to the party leaving the same for record, or to his order.

SEC. 76. It shall be the duty of recorders, upon the application of any person, and upon the payment or tender of the legal fees therefor, to make searches for conveyances, mortgages, and all other instruments, papers, or notices, recorded or filed in their respective offices, and to furnish a certificate thereof, stating the names of the parties to such instruments, papers and notices, the dates thereof, the year, month, day, hour and minute they were recorded or filed, the extent to which they affect the property to which they relate, and the books, and page or pages, where they are recorded.

SEC. 77. If any recorder to whom any instrument proved or acknowledged according to law, or any paper or notice which may by law be recorded, shall be delivered for record, shall—First. Neglect or refuse to record such instrument, paper or notice, within a reasonable time after receiving the same; or, Second. Record any instrument, papers, or notices, writing, in any other manner than is hereinbefore directed: or if any recorder—First. Neglect or refuse to keep in his office such indexes as are required by this act, or to make

FEES.

SEC. 90. For recording any instrument, paper or notice when required, for each folio, thirty cents. For copies of any record or paper, per folio, thirty cents. For filing or receiving every instrument for record, and making the necessary entries therein, twenty-five cents. For making, in the several indexes required, all the entries required, all of the filing and recording any instrument, paper or notice, for every such instrument, paper or notice, twenty-five cents. For every certificate under seal, to copies of papers or records in his office, when required, one dollar. For every entry of discharge of mortgage, on margin of record, fifty cents. For searching records and files of each year, in his office, when required, fifty cents. For abstract or certificate of title, when required, for each conveyance or incumbrance certified, one dollar. For recording every town plat, for every course, fifty cents. For figuring and lettering plats and maps, per folio, one dollar. For taking and writing acknowledgments, including seal, for each signature, one dollar. For filing and entering a minute of certificate of sheriff's sale, fifty cents. For filing and entering a minute of certificate of tax sale, fifty cents. For recording marriage certificate, one dollar. For filing and keeping each paper, not required to be recorded, and endorsing the same, if required, fifty cents. For recording proceedings of the board of county commissioners, per folio, thirty cents. For making duplicate of taxes, or copies thereof required, per folio, thirty cents. For filing treasurer's receipts and issuing licenses, to be paid by the party, fifty cents. For attending each regular and special term of the county commissioners' court, per diem, six dollars. For every certificate of election issued by order of board of county commissioners, to be paid by the party entitled to the same, one dollar. For making exhibit of expenditures, for past year, per folio, forty cents. For each order for view of road, twenty-five cents. For taking bonds of county officers and all other persons required by the board or by law to give bonds, each, two dollars. For taking oaths of county officers and other persons, and certifying the same, one dollar. For administering an oath, twenty-five cents. For each bond executed by the county commissioners for the purchase of property, or other purposes, three dollars. For each deed executed by the county commissioners, three dollars. For settlements of his accounts, or of any other county officer, two dollars. For each order drawn on county treasurer, twenty-five cents. For reading and entering remonstrance

against view of roads, or petition for damages, each, to be paid by the party remonstrating, two dollars. For entering appointments, each, fifty cents. For entering and reading report of road overseers, fifty cents. For notifying the county commissioners to attend at the opening of the poll books of any election, each, fifty cents. For certified copy of proceedings of county commissioners, or part thereof, per folio, to be paid by the party requiring such copy, thirty cents. For making final settlement of any account with the county, for each folio, thirty cents. For recording quartz claims, two dollars. For each poll book delivered to sheriff or judges of election, one dollar.

DUTIES OF CLERK OF DISTRICT COURT.

- Sec. 91. District clerk to attend personally.
92. Dues of county clerks.
93. Shall take oath of office and give bond.
94. May appoint deputies in writing, powers of.
95. May require bonds of deputies.
96. Process shall be issued in name of clerk, shall attend probate court.
98. Office to be kept at county seat.
99. Shall issue writs and process, keep dockets of courts, etc.
100. Shall be liable for wrongful act or omission.
101. Fine for wilfully neglecting duty of office.
102. No clerk or deputy to act as attorney.

Sec. 91. The clerk of the district court shall in person attend each term of the district court held in his county, and shall perform all the duties prescribed in section ninety-nine of this act, so far as the same are not inconsistent with the duties of his office, and shall be subject to the same penalties as the county clerk, for any act of omission or commission, as prescribed in section one hundred and one of this act.

Sec. 92. The county clerk of each county in this territory shall be clerk of the probate court of his county.

Sec. 93. Each county clerk shall take the oath of office, and give bond to the territory of Idaho in the form prescribed by law, conditioned for the faithful performance of the duties of his office. The penalty of the bond to be given by each county clerk, shall be in any sum not exceeding ten thousand dollars, prescribed by the county commissioners of their respective counties.

FEES.

SEC. 90. For recording any instrument, paper or notice when required, for each folio, thirty cents. For copies of any record or paper, per folio, thirty cents. For filing or receiving every instrument for record, and making the necessary entries therein, twenty-five cents. For making, in the several indexes required, all the entries required, all of the filing and recording any instrument, paper or notice, for every such instrument, paper or notice, twenty-five cents. For every certificate under seal, to copies of papers or records in his office, when required, one dollar. For every entry of discharge of mortgage, on margin of record, fifty cents. For searching records and files of each year, in his office, when required, fifty cents. For abstract or certificate of title, when required, for each conveyance or incumbrance certified, one dollar. For recording every town plat, for every course, fifty cents. For figuring and lettering plats and maps, per folio, one dollar. For taking and writing acknowledgments, including seal, for each signature, one dollar. For filing and entering a minute of certificate of sheriff's sale, fifty cents. For filing and entering a minute of certificate of tax sale, fifty cents. For recording marriage certificate, one dollar. For filing and keeping each paper, not required to be recorded, and endorsing the same, if required, fifty cents. For recording proceedings of the board of county commissioners, per folio, thirty cents. For making duplicate of taxes, or copies thereof required, per folio, thirty cents. For filing treasurer's receipts and issuing licenses, to be paid by the party, fifty cents. For attending each regular and special term of the county commissioners' court, per diem, six dollars. For every certificate of election issued by order of board of county commissioners, to be paid by the party entitled to the same, one dollar. For making exhibit of expenditures, for past year, per folio, forty cents. For each order for view of road, twenty-five cents. For taking bonds of county officers and all other persons required by the board or by law to give bonds, each, two dollars. For taking oaths of county officers and other persons, and certifying the same, one dollar. For administering an oath, twenty-five cents. For each bond executed by the county commissioners for the purchase of property, or other purposes, three dollars. For each deed executed by the county commissioners, three dollars. For settlements of his accounts, or of any other county officer, two dollars. For each order drawn on county treasurer, twenty-five cents. For reading and entering remonstrance

against view of roads, or petition for damages, each, to be paid by the party remonstrating, two dollars. For entering appointments, each, fifty cents. For entering and reading report of road overseers, fifty cents. For notifying the county commissioners to attend at the opening of the poll books of any election, each, fifty cents. For certified copy of proceedings of county commissioners, or part thereof, per folio, to be paid by the party requiring such copy, thirty cents. For making final settlement of any account with the county, for each folio, thirty cents. For recording quartz claims, two dollars. For each poll book delivered to sheriff or judges of election, one dollar.

DUTIES OF CLERK OF DISTRICT COURT.

- Sec. 91. District clerk to attend personally.
92. Dues of county clerks.
93. Shall take oath of office and give bond.
94. May appoint deputies in writing, powers of.
95. May require bonds of deputies.
96. Process shall be issued in name of clerk, shall attend probate court.
98. Office to be kept at county seat.
99. Shall issue writs and process, keep dockets of courts, etc.
100. Shall be liable for wrongful act or omission.
101. Fine for wilfully neglecting duty of office.
102. No clerk or deputy to act as attorney.

SEC. 91. The clerk of the district court shall in person attend each term of the district court held in his county, and shall perform all the duties prescribed in section ninety-nine of this act, so far as the same are not inconsistent with the duties of his office, and shall be subject to the same penalties as the county clerk, for any act of omission or commission, as prescribed in section one hundred and one of this act.

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SEC. 93. Each county clerk shall take the oath of office, and give bond to the territory of Idaho in the form prescribed by law, conditioned for the faithful performance of the duties of his office. The penalty of the bond to be given by each county clerk, shall be in any sum not exceeding ten thousand dollars, prescribed by the county commissioners of their respective counties.

SEC. 94. Each county clerk may appoint one or more deputies, who shall have the same powers, in all respects, as their principal. The appointment shall be in writing, and signed by the county clerk, and shall be filed in the office of the recorder of the county. He may revoke the appointment of any deputy at will, by writing, filed in the same office. Each deputy, before entering upon his duties, shall take the oath of office, which shall be endorsed on his appointment.

SEC. 95. The county clerk may take from each of his deputies, a bond with sureties, for the faithful performance of his duties; but the clerk and the sureties on his official bond shall be liable for all the official acts of each deputy.

SEC. 96. All process issued by any deputy clerk, shall be issued in the name of the principal.

SEC. 97. The county clerk shall, either in person or by deputy, attend each term of the probate court held in his county.

SEC. 98. The county clerk shall keep his office at the county seat of his county, and shall take charge of and safely keep, or dispose of according to law, all books, papers and records, which may be filed or deposited in his office.

SEC. 99. He shall issue all writs and process required to be issued from any court of which he is clerk; he shall enter, under the direction of the court, all orders, judgments and decrees proper to be entered; and shall keep, in each of said courts, a docket in which shall be entered the title of each cause, with the date of its commencement, a memorandum of every subsequent proceeding in said cause, with the date thereof, and a list of all the fees charged in the cause, and shall keep such other books of record as may be required by law, or by the rules of the court.

SEC. 100. For any wrongful act, or any omission to perform any duty imposed on him by law, the clerk shall be liable on his bond to any person injured.

SEC. 101. If any clerk shall knowingly and wilfully do any act contrary to the duties of his office, or shall knowingly and wilfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding two thousand dollars, and may be removed from office.

SEC. 102. No clerk or deputy clerk, shall be permitted to practice as an attorney or counsellor at law, in any action or proceeding in any court whatever; for violating the provisions of this section, he shall be deemed guilty of a misdemeanor.

FEEES OF CLERK OF SUPREME COURT.

SEC. 103. For filing each transcript of record from an inferior court, four dollars. For entering any motion, rule, or order, two dollars. For entering judgment, for first folio, two dollars; for each subsequent folio, one dollar. For each certificate given at request, and on seal, two dollars. For copy of record, or opinion of court, or other papers, for each folio, thirty cents. For entering each cause on calender, and making copy for bar, one dollar. For every remittitur or mandate, for each folio, thirty cents. For searching records or files in his office (but no charge shall be made to suitors or attorneys), for each year searched, one dollar. Filing each paper, fifty cents. For certificate of admission as attorney or counsellor, and seal, ten dollars. For administering oath or affirmation, and copying the same, one dollar. For taking and writing out acknowledgment of deeds, or other instrument, for each signature, including seal, one dollar. For recording opinion of court, each folio, thirty cents. For issuing any process of court, including seal, two dollars.

FEEES OF CLERK OF DISTRICT COURT.

SEC. 104. For entering each suit on the clerk's register of actions, and making the necessary entries therein, during the progress of the trial, for each folio, thirty cents. For issuing every writ or process, under seal, one dollar. For issuing subpoena for each witness, twenty-five cents. For filing each paper, twenty-five cents. For entering every motion, rule, order, or default, fifty cents. For entering every discontinuance, dismissal or nonsuit, fifty cents. For entering every cause on the calendar, and making a copy thereof for the bar, for each term of the court, one dollar. For calling and swearing every jury, one dollar. For receiving and entering each verdict of a jury, one dollar. For entering every final judgment, for the first folio, one dollar and fifty cents; for each subsequent folio, thirty cents. For filing judgment roll, forty cents. For entering proceeding, record or paper, for each folio, thirty cents. For every certificate, under seal, one dollar. For searching the files of each year in his office (but not to charge suitors or attorneys), one dollar. For issuing every commission to take testimony, one dollar. For taking down testimony of witnesses during trial, for each folio, thirty cents. For issuing every execution or other final process, one dollar. For issuing every decree or order of sale of mortgaged pro-

perty, one dollar. For issuing writ of injunction or attachment, one dollar. For entering judgment by confession, the same fees as in other cases of entering judgment. For receiving and filing every remitter from supreme court and accompanying papers, one dollar. For taking each bond required by law, one dollar. For taking justification thereto, one dollar. For acknowledgment of deed or other instrument, including all writing and the seal, for each name thereto, one dollar. When the court is sitting as a court of criminal jurisdiction, he shall receive for the trial of each issue, where the charge is felony, five dollars; for the trial of each issue, where the charge is misdemeanor, three dollars. He shall receive no other fee for any service whatever in a criminal action or proceeding, except for copies of papers, for each folio, thirty cents.

FEES OF THE COUNTY CLERK.

SEC. 105. For filing all the papers sent on appeal from justice's court, in each cause, one dollar and fifty cents. For all other services, the same fees as are allowed in the district court for similar services.

FEES OF THE CLERK OF PROBATE COURT.

SEC. 106. For issuing letters testamentary or of administration, one dollar. For certificate of appointing appraisers or guardians, one dollar. For writing and posting notices, when required, for each copy, one dollar. For notice given by publication, in addition to the cost of publication, one dollar. For recording wills, per folio, thirty cents. For all other services, the same as are allowed the clerks of the district court for similar services.

COUNTY TREASURER.

- SEC. 107. County treasurer, term of office.
108. Bonds, amount of and conditions of.
109. Oath to be endorsed on his certificate of office.
110. County commissioners to fill vacancy.
111. Office to be kept at county seat.
112. Treasurer shall receive and disburse all moneys on warrant of county auditor.

Sec. 113. Treasurer shall receipt to person paying into treasury.

114. Books, accounts, etc., of treasurer to be subject to inspection of county commissioners.

115. When order drawn by auditor, etc., when not paid.

117. Notice to be given by treasurer when orders will be paid.

118. Duty of treasurer when interest is paid on order.

119. Priority of warrants or orders.

120. When warrant drawn on county treasurer not receivable for tax.

121. When treasurer shall deposit orders and warrants with auditor.

122. When county commissioners may remove.

123. Successor to receive moneys, books, etc., of former treasurer.

124. Treasurer to settle annually with auditor.

125. Office, when to be kept open.

126. Duties of treasurer and collector, in settlement with territorial treasurer, oath required, etc.

127. County treasurer may appoint in writing, deputies, power of.

128. May require bond from deputies, official acts to be in name of principal.

129. Compensation for receiving and disbursing moneys.

Sec. 107. The county treasurer shall hold his office for the term of two years, from the time of entering upon the duties of his office, and until his successor is chosen and qualified.

Sec. 108. Each county treasurer, before entering upon the duties of his office, shall enter into bond, with two or more sufficient freehold sureties, to the acceptance of the board of county commissioners of his proper county, in a penalty of double the probable amount of money that may at any time come to his hands, as such treasurer, with condition for the paying over all moneys according to law, which shall come into his hands for territorial, county or other purposes, and that he will faithfully and promptly discharge all the duties of his said office that are now or may hereafter be enjoined on him by law.

Sec. 109. He shall likewise take the oath prescribed by law, to be indorsed on his certificate of election, before entering on the duties of his office.

Sec. 110. Whenever the office of county treasurer shall become vacant by death, removal out of the county, resignation, neglect to give bond, or from any other cause, the board of commissioners shall forthwith convene and appoint some suitable person to fill such vacancy; and the person so appointed shall give bond and take the oath, in the like manner as required of county treasurers in the one hundred and eighth section of this act, and shall hold his office until the expiration of the term for which his predecessor was elected or appointed, and until his successor is chosen and qualified.

SEC. 111. Each county treasurer shall keep his office at the seat of justice for his county, and shall keep a fair and accurate account of all money by him received, showing the amount thereof, the time when, from whom, and on what account received; also, of all disbursements by him made, showing the amount thereof, the time when, to whom, and on what account paid; and he shall so arrange his books that the amount received and paid on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate and distinct accounts, as well as that the whole receipts and expenditures shall be shown by one general or cash account; but no money received for taxes, charged on the duplicate of the current year, shall be by the treasurer entered on his account with the county, until he shall have made his annual settlement therefor with the county auditor.

SEC. 112. It shall be the duty of the county treasurer to receive all moneys due and accruing to the county, or which are required by law to be paid to him or into the county treasury, and to pay and disburse the same, on the warrant of the county auditor, founded on orders made by the board of county commissioners.

SEC. 113. When any money shall be paid to the county treasurer (except such as shall have been paid on account of taxes, charged on the duplicate), he shall give to persons paying the same a receipt therefor; which receipt such person shall forthwith deposit with the county auditor, who shall charge the treasurer therewith, and give the person paying the same a quietus.

SEC. 114. The books, accounts and vouchers of the county treasurer shall at all times be subject to the inspection and examination of the county commissioners, and it is hereby made their duty to make such examination and count the money on hand at least once each year.

SEC. 115. The county treasurer, when an order drawn on him, as such treasurer, by the auditor of his county, is presented for payment, shall, if there be money in the treasury for that purpose, redeem the same, and shall write on the face of such order, "redeemed," the date of redemption, and shall sign his name thereto.

SEC. 116. When any order or warrant shall be presented to the county treasurer for payment, and the same is not paid for want of funds, the treasurer shall indorse thereon, "not paid for want of funds," annexing the date of presentation and signing his name thereto; and from that time till redeemed, said order or warrant shall bear ten per cent. per annum.

SEC. 117. So soon as there shall be sufficient funds in the treasury of the county to redeem the orders or warrants drawing interest, the county treasurer shall give notice in some newspaper in his county, or, if no newspaper be printed in his county, then by written or printed notices, posted upon the court house door, stating therein that he is ready to redeem said orders or warrants; and from the date of such notice, said orders or warrants shall cease to bear interest.

SEC. 118. When the county treasurer shall redeem any order on which interest is due, he shall note on the order or warrant the amount of interest paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

SEC. 119. Orders or warrants drawn on the county treasury and properly attested, shall be entitled to preference as to payment out of moneys in the treasury, properly applicable to such order, according to the priority of time in which the same may have been presented. The time of presenting such order shall be noted by the treasurer, and upon the receipt of moneys into the county treasury, not otherwise appropriated, it shall be the duty of the treasurer to set apart the same, or so much thereof as may be necessary, for the payment of such order or warrant. Should such order or warrant not be re-presented for payment within sixty days from the time of the notice required in the one hundred and seventeenth section of this act, the fund set aside for the payment of the same, shall be by the treasurer applied to the redemption of unpaid warrants next in order of registry: *Provided*, That the board of county commissioners may, on the application and presentation of warrants properly indorsed, which shall once have been advertised, pass an order directing the county to redeem and cancel such warrants out of any money in the treasury, not otherwise appropriated.

SEC. 120. No order or warrant drawn on the county treasurer, and payable out of the county revenue, shall be received in payment of county tax, or dues, except from the person in whose favor it was drawn, but shall be subject to redemption only in the order in which it stands registered or noted in the treasurer's book.

SEC. 121. The county treasurer shall, on the first Mondays of ——— in each year, deposit with the county auditor all orders and warrants by him redeemed, and take the auditor's receipt therefor.

SEC. 122. Whenever suit shall have been commenced against any delinquent county treasurer, the board of county commissioners may, in their discretion, remove such treasurer

from office, and appoint some person to fill the vacancy thereby created, as hereinbefore directed.

SEC. 123. Each county treasurer, on going out of office, shall deliver to his successor in office, all the public money, books, accounts, papers, and documents, in his possession; and in case of the death of any county treasurer, his legal representatives shall in like manner, deliver up all such moneys, books, accounts, papers, and documents, as shall come into their possession: *Provided, however,* No percentage shall be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessor.

SEC. 124. Every county treasurer shall make a full settlement of all his accounts with the county auditor, annually, between the second and third Monday of ——— in the presence of the board of county commissioners, who shall have a supervisory control of such settlement, said settlement to be governed in the manner prescribed by law, and said treasurer shall be credited with all sums paid for printing and publishing notices required to be given by him in the course of his official duties, and with all sums paid by him for blank books, stationery, and office furniture, to be paid on the order of the county auditor.

SEC. 125. The treasurer shall keep his office open for the transaction of business, from ten o'clock A. M. until four o'clock P. M., of every day in the year, Sunday excepted.

SEC. 126. It shall be the duty of each collector or county treasurer, and they are hereby required to make oath to the territorial treasurer when making their annual settlement, as required by law, that the money paid over by them into the territorial treasury at such settlement, whether coin, territorial, or county warrants, is of the same denomination as that received by them in the discharge of their official duties, and that in no case where gold dust or coin has been received by them for taxes, or otherwise, has the money thus received, been converted into or used for the purchase of county or territorial bonds or warrants, or United States legal tender notes: *Provided,* That it shall be the duty of collectors of taxes to furnish to the parties paying the same, in every case, a receipt specifying the kind of money in which payments has been made, whether gold and silver, or territorial or county scrip, or warrants, and to file such receipts in duplicate, in the office of the clerk of the county, for three months after the first of January in each fiscal year, after which time they shall be filed in the office of the territorial auditor.

SEC. 127. The county treasurer of each of the several

counties of this territory may appoint one or more deputies, who shall have the same power in all respects as their principal. The appointment shall be in writing, signed by said treasurer, and shall be filed in the office of the recorder of his county. He may revoke the appointment of any deputy at will, by writing filed in the same office. Each deputy, before entering upon his duties, shall take the oath of office, which shall be indorsed on his appointment.

SEC. 128. The said treasurer may take from each of his deputies a bond, with sureties, for the faithful performance of his duties; which bond shall innure as well to the benefit of the sureties of the treasurer as to the treasurer. But the county treasurer and his sureties on his official bond shall be liable for all the official acts of his deputy or deputies.

SEC. 129. All official acts of any deputy county treasurer shall be in the name of the principal.

SEC. 130. The county treasurer shall be allowed, on all moneys received and disbursed by him, three per cent. on the first thirty thousand dollars; two per cent. on all over thirty thousand dollars and under one hundred thousand dollars, and one per cent. on all over one hundred thousand dollars: *Provided*, Nothing in this act shall be construed so as to allow any officer a per centage on both receiving and disbursing.

DUTIES OF CORONER.

SEC. 131. Coroner, duties of.

132. When to act as sheriff.

133. Powers, when acting as sheriff.

134. Coroner shall summon jury in cases of murder, suicide, etc.

135. Forfeit for non-attendance as juror.

136. Jury to inquire into cause of death of, etc.

137. Subpoenas may be issued, surgeon may be summoned.

138. Witness may be compelled to attend.

139. Jury shall render verdict and certificate in writing.

140. Testimony of witnesses to be reduced to writing.

141. When offender is arrested before inquisition filed, coroner shall deliver same to magistrate trying case.

142. Coroner may issue warrant for apprehending criminal.

143. Form of coroner's warrant, may be served in other county.

145. Duty of coroner after inquest upon dead body.

146. Delivery of money to county treasury.

147. When money demanded within six years.

Sec. 148. County commissioners shall require written statement of coroner, etc.

149. Justice of the peace may act as coroner, fees of.

151. When no one takes charge of body, etc.

Sec. 131. Every person who may be chosen coroner of any county, shall, before he enter upon the discharge of the duties of his office, take the oath of office prescribed by law, and give bond in such sum as the county commissioners of his county may require.

Sec. 132. The coroner shall perform the duties of sheriff in all cases where the sheriff is interested, or otherwise incapacitated from serving; and also in cases of vacancy by death, resignation or otherwise, in the office of sheriff, the coroner shall discharge the duties of such office until a sheriff is elected and qualified.

Sec. 133. Whenever the coroner acts as sheriff, he shall possess the powers and perform all the duties of sheriff, and shall be liable on his official bonds, in like manner as a sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services.

Sec. 134. When a coroner has been informed that a person has been killed, or has committed suicide, or has suddenly died, under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another, by criminal means, he shall go to the place where the body is and forthwith summon not less than nine, nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of the deceased is, to inquire into the cause of his death.

Sec. 135. Every person summoned as a juror, who shall fail to appear, without having a reasonable excuse, shall forfeit any sum not exceeding one hundred dollars—to be recovered by the coroner, in the name of the people of the territory, before any justice of the peace in the proper township; and, when collected, to be paid over to the county treasurer, for the use of the county.

Sec. 136. When six or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when and where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict thereon, according to the evidence afforded them or arising from the inspection of the body.

Sec. 137. The coroner may issue subpoenas for witnesses, returnable forthwith or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses every person who, in

his opinion or that of any of the jury, has any knowledge of the fact; and he may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

SEC. 138. A witness served with a subpoena may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace.

SEC. 139. After inspecting the body and hearing the testimony, the jury shall render their verdict, and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where and by what means, he came to his death, and if he was killed or his death occasioned by the act of another, by criminal means, who is guilty thereof.

SEC. 140. The testimony of the witnesses examined before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and shall be forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county.

SEC. 141. If, however, the person charged with the commission of the offence be arrested before the inquisition can be filed, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statement taken before him, to the office of the clerk of the district court of the county.

SEC. 142. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, so that his death was occasioned by the act of another by criminal means, and the party committing the act be ascertained by the inquisition, and be not in custody, the coroner shall issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary, for the arrest of the person charged.

SEC. 143. The coroner's warrant shall be substantially in the following form: "County of _____. The people of the territory of Idaho to any sheriff, constable, marshal, or policeman, in this territory: An inquisition having been this day found by a coroner's jury, before me, stating that A. B. has come to his death by the act of C. D., by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith to arrest the above named C. D., and take him before the nearest or most accessible magistrate in this county. Given under my hand, this ____ day of _____, A. D. 18—. E. F., Coroner of the county of _____."

SEC. 144. The coroner's warrant may be served in any county, and the officer serving it shall proceed thereon in all respects, as upon a warrant of arrest on an information before a magistrate, except that when served in another county, it need not be indorsed by a magistrate of that county.

SEC. 145. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same, by a civil action, in the name of the county.

SEC. 146. Upon the delivery of money to the treasurer, he shall place it to the credit of the county. If it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall, in like manner, place the proceeds to the credit of the county.

SEC. 147. If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner, and of the county in relation to the matter; or the same may be so paid at any time thereafter, upon the order of the commissioner's court of the county.

SEC. 148. Before auditing and allowing the account of the coroner, the board of commissioners shall require of him a statement, in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer.

SEC. 149. If the office of coroner be vacant, or he be absent, or unable to attend, the duties of his office may be performed by any justice of the peace of the county, with the like authority, and subject to the same obligations and penalties as the coroner.

SEC. 150. A justice of the peace, acting as coroner, shall be entitled to the same fees, payable in the same manner.

SEC. 151. When an inquest shall be held by the coroner, and no person shall offer to take charge of the body of the deceased, it shall be his duty to cause said body to be decently interred; and in case there shall not be sufficient property belonging to the estate of the deceased to pay the necessary expenses of said burial, said expense shall be a legal charge upon his county; the coroner shall be entitled to receive the

sum of two dollars out of his county treasury for attending to the burial of such dead body.

FEEES OF CORONERS.

Sec. 152. All services in summoning a jury of inquest, five dollars. For swearing a jury, one dollar. For issuing a warrant of arrest, fifty cents. For issuing subpoenas, twenty-five cents. For each mile necessarily traveled in going to the place of the dead body, fifty cents; which fees in all inquests shall be paid out of the county treasury, as other demands. For all services rendered by them, when acting as sheriffs, the same fees as are allowed to sheriffs for similar services. For swearing each witness, twenty-five cents. For taking down the testimony of each witness, per folio, thirty cents.

DUTIES OF CONSTABLES.

Sec. 153. Constables, duties of.

- 155. When constable returns governed by laws regulating sheriff.
- 156. Penalty for neglect or refusal to return process.
- 157. Refusal or neglect to make levy, etc., penalty.
- 158. When constable refuses to pay over.
- 160. Constables to be conservatives of the peace.
- 161. Penalty for wilfully neglecting duty.
- 162. Constables not permitted to practice as attorney.

Sec. 153. Every person elected to the office of constable shall take the oath of office and give bond, to be approved by the board of county commissioners of his county, conditioned for the faithful performance of the duties of his office. The bond shall be in such penalty as the board of county commissioners may direct, and, after approval, shall be filed and recorded in the office of the county clerk.

Sec. 154. The constable shall attend the courts of justices of the peace of his township, whenever required, and within his township shall execute all lawful orders made by them, and execute and return all writs and process directed to him by such justice or any lawful authority, and shall serve within his township and return all notices placed in his hands for service, relating to any suit or proceeding in any court of this territory.

Sec. 155. In regard to the execution, service and return

of orders, writs, process and papers, where there are no positive provisions of law prescribing his duties, he shall be governed by the laws relating to sheriffs, so far as they are applicable.

SEC. 156. For failing or refusing to return, as required by law, any writ or process issued by a justice of the peace, or any paper connected with any suit or proceeding before such justice, he shall be liable to pay the party at whose instance the suit or process has issued, or for whom the paper is to be served, the sum of fifty dollars; to be recovered of him and his sureties by motion, before a justice of the peace of his township, five days' notice of the motion having been given.

SEC. 157. If any constable to whom any writ of execution shall have been delivered, shall neglect or refuse, after being required by the creditor, his agent or attorney, to levy upon or sell any property of the defendant, which is liable to be levied upon and sold, he and the sureties on his bond shall be liable to the creditor for the value of such property.

SEC. 158. If any constable shall neglect or refuse to pay over any money in his hands, which he has collected or received in his official capacity, when demanded by the person entitled thereto, the amount thereof, with thirty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered from such constable and his sureties, as provided in the ——— section of this act.

SEC. 159. For any official act or any omission to perform any duty required of him by law, the constable shall be liable on his bond to any person injured.

SEC. 160. Constables shall be conservatives of the peace within their respective townships.

SEC. 161. Any constable who shall be guilty of any manifest and wilful negligence, or shall, in the administration or under color of his office, be guilty of any oppression or wrongful act, shall, upon conviction, be fined in a sum not exceeding two thousand dollars.

SEC. 162. No constable shall be permitted to practice as an attorney or counsellor at law, before the court of any justice of the peace of his township. For violating the provisions of this section, he shall be deemed guilty of a misdemeanor.

FEEES OF CONSTABLES.

SEC. 163. For serving summons in civil suit, for each defendant, one dollar. For summoning a jury before a justice

of the peace, three dollars. For taking a bond, required to be taken, one dollar. For summoning each witness, fifty cents. For serving an attachment against the property of a defendant, three dollars. For receiving and taking care of property on execution, attachment or order, his actual necessary expenses, to be allowed by the justice who issued the execution, upon the affidavit of the constable that such charges are correct, and the expenses necessarily incurred. For collecting all sums on execution, three per cent., to be charged against the defendant in the execution. Constables shall receive, in serving summons, attachment, order, execution, venire, notice and subpoena in civil cases, for each mile necessarily traveled, in going only (but when two or more persons are served in the same suit, mileage only shall be charged for the most distant, if they live in the same direction), fifty cents. For serving a warrant or order for delivery of personal property, or making an arrest in civil cases, three dollars. For service and travel in criminal cases, the same fees as sheriffs for like services. For all other services, except attending court, the same fees as are allowed to sheriffs for similar services.

JUSTICES' COURTS.

SEC. 164. Justices of the peace shall hold their offices for two years and until their successors are elected and qualified. They shall be chosen by the electors of their respective townships or cities at the general election in the year one thousand eight hundred and sixty-four, and at the general election every two years thereafter, and shall enter upon their duties on the first Monday of January subsequent to their election. Whenever a vacancy shall occur in the office of a justice, by death, resignation, or otherwise, a special election may be ordered by the probate judge to supply such vacancy. The justice elected to supply a vacancy shall hold his office only for the unexpired term of his immediate predecessor. Each justice, before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall execute a bond to the territory in the sum of three thousand dollars, conditioned for the faithful performance of his duties, and file the same with the county clerk.

FEES OF JUSTICES.

SEC. 165. For filing each paper, twenty-five cents. Issuing any writ or process, by which suit is commenced, one dollar.

For entering such upon his docket, fifty cents. For subpoena, to each witness, twenty-five cents. For administering an oath or affirmation, twenty-five cents. For certifying the same, twenty-five cents. For each certificate, fifty cents. For issuing writ of attachment, or of arrest, or for delivery of property, two dollars. For entering any final judgment, per folio, for the first folio, one dollar; for each additional folio, thirty cents. For taking and approving any bond or undertaking, directed by law to be taken or approved by him, fifty cents. For taking justification to a bond, one dollar. For swearing a jury, one dollar. For taking depositions, per folio, thirty cents. For entering satisfaction of a judgment, fifty cents. For copy of judgment, order, docket, proceedings, or paper in his office, for each folio, thirty cents. For issuing commission to take testimony, one dollar. For issuing supersedeas to an execution, fifty cents. For making up and transmitting transcript and papers on appeal, five dollars. For issuing search warrant, one dollar. For issuing an execution, fifty cents. For celebrating marriage and returning certificate to the recorder, six dollars. For all services and proceedings before a justice of the peace, in a criminal action or proceeding, whether on examination or trial, six dollars. For taking bail after commitment in criminal case, one dollar. For entering cause without process, one dollar. For entering judgment by confession, and only on affidavit as required in the district court, one dollar. For entering every motion, rule, order, verdict, or default, twenty-five cents.

DUTIES OF PROBATE JUDGE.

SEC. 166. There shall be in each of the counties of this territory, a probate court, with the jurisdiction conferred by this chapter.

SEC. 167. The probate judge of each county shall be the judge of the probate court. The probate judge of each county shall, except in cases otherwise provided by special statutes, be chosen by the electors of the county, at the general election in the year one thousand eight hundred and sixty-four, and every four years thereafter, and shall enter upon the duties of his office on the first Monday of January subsequent to his election. Before entering upon his duties, he shall take the oath of office prescribed by law.

SEC. 168. In case of a vacancy in the office of probate judge, the vacancy shall be filled by appointment from the governor, until the next general election, when a probate

judge shall be chosen for the unexpired term of the preceding judge, and until the new judge elected be qualified.

SEC. 169. This court shall hold a term on the fourth Monday of January, April, July, and October, of each year, which shall continue until all the business of the court be disposed of.

SEC. 170. If a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to procure such room, attendants, fuel, lights, and stationery, and the expenses thereof shall be a county charge. It is hereby made the duty of the probate judges to reside at the county seats of their respective counties.

FEES OF PROBATE JUDGES.

SEC. 171. For every order or judgment, when not contested one dollar; when contested three dollars.

SEC. 172. The fees allowed for services rendered by the probate judge, shall be collected by the county clerk, who shall keep a full and accurate account of the same in a book kept separate and apart for that purpose. The county clerk shall make a settlement, at least once a month, with the county treasurer, for the fees collected, and pay the amount in his hands into the county treasurer. His accounts shall always be open to inspection by any county officers, or any person who may be interested therein. The county treasurer, in a book kept specially for that purpose, shall keep a full account of all the monies thus received, which shall constitute a separate and distinct fund, and so much thereof as may be necessary for that purpose, shall be applied to the payment of the salary of the probate judge, and the residue, if any, shall be paid into the county treasury; and it shall be a misdemeanor for a probate judge to receive any fees to his own use, except in such manner as prescribed in this section.

DUTIES OF COUNTY SURVEYOR.

SEC. 173. Each county surveyor, upon entering upon the duties of his office, shall take the oath as prescribed by law, and give bond in the sum of two thousand dollars, or such further sum as the board of commissioners of his county may require.

SEC. 174. The county surveyor may appoint such number of deputies as he may think proper, who shall severally take

the oath prescribed by law, and for the faithful performance of whose duty he shall be responsible.

SEC. 175. The certificate of the county surveyor or any of his deputies shall be submitted as legal evidence in any court in this territory; but the same may be explained or rebutted by other evidence. No survey, or re-survey hereafter made by any person except the county surveyor or his deputy, shall be considered legal evidence in any court within this territory, except such surveys as are made by the authority of the United States, or by mutual consent of the parties.

SEC. 176. When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before a court, and a survey of which is necessary, the court shall direct the survey to be made by some capable and disinterested person, who shall be authorized to administer oaths, in the same manner as the county surveyor is directed to do, and shall return such survey, on oath or affirmation, and shall receive for his services the same fees as the county surveyor would be entitled to for similar services.

SEC. 177. During a vacancy in the office of county surveyor of any county, the board of commissioners of such county may appoint some person to perform the duties of surveyor until such vacancy shall be filled in the manner prescribed by law.

SEC. 178. It shall be the duty of said surveyor, by himself or one of his deputies, to execute any survey that may be required, by order of any court, or upon application of any individual or corporation.

SEC. 179. He shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided by the county commissioners for that purpose, which shall be transmitted to his successors in office. He shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, endorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with the certificate of survey, shall be furnished by him to any person requiring the same, upon payment of the fees allowed by law.

SEC. 180. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated; and on such application being made, the surveyor is authorized and required to make the survey, which shall be as valid as though such lands were situated entirely within the county for which such surveyor was chosen.

SEC. 181. When lands, the title of which is in dispute before any court, shall be divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of such lands are situated.

SEC. 182. In all surveys, the courses shall be expressed according to the true meridian, and variation of the magnetic meridian from the true meridian shall be expressed on the plat, with the year, month and day of the survey. If a party for whom the survey is made does not furnish the necessary laborers and markers, the county surveyor or his deputy may employ the necessary laborers and markers, and shall receive the reasonable hire of all assistance necessary to be employed in making the survey.

SEC. 183. Any county surveyor who shall fail or refuse to perform any of the duties required of him by this act, shall be fined in a sum not exceeding two hundred dollars.

FEES OF SURVEYOR.

SEC. 184. For the first mile actually run with the compass and chain, five dollars; for each succeeding mile, four dollars. For each copy of a plat and certificate, three dollars. For each lot laid out and platted in any city or town, three dollars. For recording a survey, two dollars. For calculating the quantity of every tract of land not divided, one dollar. For calculating the quantity of each division made in a tract of land, town lots excepted, one dollar. For traveling to the place of survey, for each mile, in going only, fifty cents. For ascertaining the location of every town lot in an old survey, and measuring and marking the same, three dollars. For copies and certificates, per folio, thirty cents. For erecting a monument at the corner of any survey, when required, three dollars. Expense of assistants shall be an additional charge, to be agreed upon by the parties.

FEES OF WITNESSES.

SEC. 185. For attending in any civil suit or proceeding before any court of record, referee, commissioners, or justice of the peace, for each day, five dollars. For traveling to the place of trial, for each mile, fifty cents. No person shall be obliged to testify in a civil action, unless his fees for attendance have been tendered him, or he shall not have demanded the same; and no person shall be obliged to attend in a civil action or proceeding as a witness, without the county in which

he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

FEEES OF JURORS.

SEC. 186. For each day, to be paid to grand and petit jurors, in all cases out of the county treasury, four dollars.

FEEES OF JUDGES AND CLERKS OF ELECTIONS.

SEC. 187. For each day's attendance at any general or special election, the judges and clerks of election shall each receive five dollars, to be audited and paid out of the county treasury as other charges against the county.

INTERPRETERS AND TRANSLATORS.

SEC. 188. Interpreters and translators may be allowed such compensation for their services as the court shall certify to be necessary, to be taxed and collected as other costs, but the same shall not exceed six dollars per day.

SEC. 189. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

ACTS AND JOINT RESOLUTIONS.

AN ACT Defining the time for Acts and Joint Resolutions to take effect.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All acts and joint resolutions which declare that they "take effect and are in force from and after their approval by the governor," are hereby declared to so take effect only at the seat of government; and in other portions of the territory allowing twenty miles from the seat of government for each day.

SEC. 2. All acts and joint resolutions which have passed both houses of the legislature, and do not receive the approval of the governor, and which are subsequently passed by a two-thirds vote of both houses, shall take effect and be in force, from and after their passage by such two-thirds vote, at the seat of government; and in other places in the territory, allowing twenty miles from the seat of government for each day.

SEC. 3. All acts and joint resolutions which do not take effect from and after approval by the governor, or from and after their passage, as provided in sections one and two of this act, shall take effect and be in force in all parts of the territory upon the day named in the provisions of such acts or joint resolutions.

SEC. 4. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 4th, 1864.

AGE OF MAJORITY.

AN ACT fixing the Age of Majority.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any con-

tract, and shall be, to all intents and purposes, held and considered to be of lawful age.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 6th, 1864.

ATTORNEYS AND COUNSELLORS.

AN ACT relative to Attorneys and Counsellors at Law.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All persons admitted to practice in any of the courts of this territory, shall be known as attorneys and counsellors at law.

SEC. 2. Any white male citizen of the age of twenty-one years, of good moral character, and who shall possess the necessary qualifications of learning and ability, shall be entitled to admission as attorney and counsellor in all the courts of this territory.

SEC. 3. Every applicant for admission as attorney and counsellor shall produce satisfactory testimonials of good moral character, and undergo a strict examination, in open court, as to his qualifications, by one of the judges of the supreme court of this territory.

SEC. 4. If upon examination, he be found duly qualified, the court shall admit him as attorney and counsellor in all the courts of this territory, and shall direct an order to be entered to that effect upon its record, and that a certificate of such record be given to him by the clerk of the court, which certificate shall be his license.

SEC. 5. The district court of this territory is authorized to admit, as attorney and counsellor, any white male citizen of the age of twenty-one years, and of good moral character, who possesses the requisite qualifications, on similar testimonials and like examinations as are required by the preceding sections for admission by the supreme court, and may direct its clerk to give a certificate of such admission, which certificate shall be his license to practice in such court.

SEC. 6. Every person, before receiving license to practice law, shall take the oath prescribed by law, and pay over to the

territorial treasurer the sum of ten dollars for the use of the territorial library fund, and the clerk of the court shall require of the person so admitted the receipt of the said treasurer, before issuing such license, and in no case shall the oath be administered and the license issued until such receipt is produced and filed in the office of the clerk.

SEC. 7. The examination may be dispensed with, in the case of a person who has been admitted attorney and counsellor in the highest courts of a sister state or territory; his affidavit of such admission, or his license showing the same, shall be deemed sufficient to entitle him to admission.

SEC. 8. Each clerk shall keep a roll of attorneys and counsellors of the court of which he is clerk, which shall be record of the court.

SEC. 9. If any person shall practice law in any court, except a justice's, recorder's, or police courts, without having received a license as attorney and counsellor, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt.

SEC. 10. An attorney and counsellor shall have authority: First. To bind his client in any of the steps of an action or proceeding, by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise; Second. To receive money claimed by his client in an action or proceeding, during the pendency thereof, or within one year after judgment and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction in the judgment.

SEC. 11. The attorney in an action, or special proceeding, may be changed at any time before judgment or final determination, as follows: First. Upon his own consent, filed with the clerk, or entered upon the minutes; Second. Upon the order of the court or judge thereof, on the application of the client.

SEC. 12. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then he shall be bound to recognize the former attorney.

SEC. 13. When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney, shall, before any further proceeding be had against him, be required by the adverse party by written notice, to appoint another attorney, or to appear in person.

SEC. 14. An attorney and counsellor may be removed or

suspended by the supreme court, or by any district court in the territory, for either of the following causes, arising after his admission to practice: First. Upon his being convicted of felony or misdemeanor, involving moral turpitude, in either of which cases the record of his conviction shall be conclusive evidence. Second. For misconduct in office, or for good cause shown.

SEC. 15. In case of the conviction of an attorney or counsellor of felony or misdemeanor, involving moral turpitude, the clerk of the court in which the conviction was had shall, within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction.

SEC. 16. The proceedings to remove or suspend an attorney and counsellor, under the first subdivision of section fourteen, shall be taken by the court on the receipt of the certified copy of the record of convictions; the proceedings under the second subdivision of section fourteen, may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

SEC. 17. If the proceedings be upon the information of another, the accusation shall be in writing, and shall be presented to the court.

SEC. 18. The accusation shall state the matters charged, and shall be verified by the oath of the person making it, or some other person, to the effect that the charges therein contained are true.

SEC. 19. After receiving the accusation, the court shall, if in its opinion the case require it, make an order requiring the accused to appear and answer to the accusation, at a specified time, in the same or subsequent term, and shall cause a copy of the order, and of the accusation, to be served upon the accused, within a prescribed time before the day appointed in the order.

SEC. 20. The accused must appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he do not appear, the court may proceed and determine the accusation in his absence.

SEC. 21. The accused may answer to the accusation, either by objecting to the sufficiency, or by denying its truth.

SEC. 22. If he object to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specific form, it being sufficient if it present intelligibly, the grounds of objection; if he deny the truth of the accusation, the denial may be oral, and without oath, and shall be entered upon the minutes.

SEC. 23. If an objection to the sufficiency of the accusation be not sustained; the accused shall answer forthwith.

SEC. 24. If the accused plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal, or suspension; if he deny the matter charged, the court shall immediately, or at such time as it may appoint, proceed to try the accusation.

SEC. 25. The court may, in its discretion, order a reference to a committee to take depositions in the matter, and to report to the court, before proceeding to try the accusation.

SEC. 26. Upon conviction, in cases arising under the first subdivision of section fourteenth, the judgment of the court shall be, that the name of the party be stricken from the roll of attorneys and counsellors of the court, and he be precluded from practicing as such attorney and counsellor in all courts of this territory; and upon conviction in cases under the second subdivision of section fourteen, the judgment of the court may be, according to the gravity of the offence charged, deprivation of the right of practice as attorneys and counsellors in the courts of this territory, permanently, or for a limited period.

SEC. 27. Nothing in this act shall be so construed as to prevent any person from appearing in his own behalf, in any court of this territory.

SEC. 28. This act to take effect and be in force from and after its passage.

APPROVED January 13, 1864.

CHATTEL MORTGAGES.

AN ACT concerning Chattel Mortgages.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. Chattel mortgages may be made on the following property to secure the payment of just indebtedness, viz: Saw-mills, grist-mills, with the machinery connected therewith, printing presses, and printing material, mining claims, with the improvements thereon, quartz mills, with the machinery connected therewith, upholstery and furniture in

hotels and public houses, when mortgaged to secure the purchase money thereof, and all buildings which are not fixed permanently to the soil, no mortgage made by virtue of this act shall have any legal force or effect (except between the parties thereto) unless the residence of the mortgagor and mortgagee, the sum to be secured and the rate of interest to be paid, when and where payable, shall be set out in the mortgage, and the mortgagor and mortgagee shall make affidavit that the mortgage is *bona fide* and made without any design to defraud and delay creditors, which affidavit shall be attached to such mortgage.

SEC. 2. All mortgages made in pursuance of this act, with the affidavit attached shall be recorded in the county where the mortgagor lives and also in the county where the property is located: *Provided*, That property *intransitu* from the possession of the mortgagee to the county in which the mortgagor resides, or to a location for use during a reasonable time for such transportation, shall be considered as located, it shall be the duty of the county recorders of this territory to provide proper books of record and of indexes, and record all mortgages made in pursuance of the provisions of this act, in the same manner as they are required by the law to record deeds and mortgages on real estate.

SEC. 3. No chattel mortgages shall be valid, except between the parties, unless the same shall have been made, executed and recorded in conformity with the provisions of this act: *Provided, however*, If the mortgagee receives and retains actual possession of the property mortgaged, he may omit the recording of his mortgage during the continuance of such actual possession.

SEC. 4. A right of redemption shall remain in the mortgagor until the same shall have been foreclosed by due process of law, or by agreement between the parties to the mortgage, which agreement shall be entered on the record of the mortgage.

SEC. 5. All property mortgaged in pursuance of the provisions of this act, may be attached at the suit of the creditors of the mortgagor, such creditor shall pay or tender to the mortgagee the actual payment due him on such mortgage, before the officer making such attachment shall be entitled to the actual possession of such property, when the property thus situated and thus redeemed shall have been sold by the officer, by virtue of due legal proceedings, out of the proceeds of the sale, he shall—First. Pay to creditor the amount advanced by him to pay the mortgage, with legal interest thereon. Second. Pay all legal costs and fees appertaining to the judg-

ment, execution and sale. Third. Pay the judgment creditor the amount of the judgment, and any remaining surplus pay to the judgment debtor. If the creditor of the mortgagor prefers, he may cause to be attached the right of redemption of the said mortgagor and cause the same to be sold subject to the rights of the mortgagee, such attachment shall be made by leaving a copy of the writ of attachment, with notice of the attachment, with the mortgagee, when a sale of such equity is made on execution obtained by such attacking creditor, the sum realized shall be applied to the payment of costs, fees, discharge of the execution, and any remainder paid to the judgment debtor, when the interest of the mortgagee shall be attached, a copy of the writ of attachment shall be left with the mortgagor, with notice of attachment, any payment made by him to the mortgagee, after such notice, shall not release the attachment or effect the rights of the attaching creditor, but such mortgagor may pay the amount due on said mortgage to the officer who made the attachment, and thereupon said officer shall release said attachment and hold the money so paid him in the same manner as if he had originally attached money.

SEC. 6. This act shall not be so construed as to interfere or conflict with the lawful mining rules, regulations or customs in regard to the locating, holding or forfeiture of mining claims, but in all cases of mortgages of mining interests under this act, the mortgagee shall have the right to perform the same acts that the mortgagor might have performed for the purpose of preventing a forfeiture of the same under the said rules, regulations or customs, and shall be allowed such compensation therefor as shall be deemed just and equitable by the court ordering the sale upon a foreclosure: *Provided*, That such compensation shall in no case exceed the amount realized from the claim by a foreclosure and sale.

SEC. 7. The mortgagee, in all mortgages made under this act, shall be allowed one day for every twenty miles of the distance between his residence and the county recorder's office, where such mortgage ought by law to be recorded, to conform to the provisions of this act, before any attachment shall be valid, made by the creditors of the mortgagor.

SEC. 8. This act shall take effect and be in force from and after its approval by the governor.

APPROVED February 2, 1864.

COMMISSIONERS OF DEEDS.

AN ACT to provide for the appointment of Commissioners of Deeds, and defining their duties.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. The governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the territories and districts of the United States, and in each foreign state, territory, colony and kingdom, one or more commissioners, to continue in office four years, unless sooner removed by the governor, who shall have power to administer oaths, and to take depositions and affidavits to be used in this territory, and also to take the acknowledgments or proofs of deeds, or other instruments, to be recorded in this territory.

SEC. 2. All oaths administered by said commissioners, all depositions and affidavits taken by them, and all acknowledgments and proofs aforesaid, certified by them and under their seal as such commissioners, shall have the same force and effect, in law, to all intents and purposes, as if done and certified by any recorder or other officer within this territory, who is now, or may hereafter be authorized, by law, to perform such acts.

SEC. 3. Before any commissioner, appointed as aforesaid, shall enter upon the duties of such office, he shall take and subscribe an oath, as prescribed by the United States, before some officer authorized to administer oaths, at the place for which such commissioners may be appointed, that he will faithfully perform and discharge all the duties of his office; which oath shall be transmitted and filed in the office of the secretary of the territory of Idaho within six months after taking the same.

SEC. 4. It is hereby made the duty of the secretary of the territory to furnish each commissioner appointed as aforesaid, with a copy of this act.

SEC. 5. The secretary of the territory shall be entitled to receive a fee of two dollars for issuing each commission under the provisions of this act, to be paid by the party applying therefor.

SEC. 6. This act shall take effect and be in force from and after its approval by the governor.

APPROVED January, 6, 1864.

COUNTY COMMISSIONERS.

AN ACT creating the Board of County Commissioners, and defining their duties.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That there shall be established in each organized county in this territory a board of commissioners, to consist of three qualified electors, two of whom shall constitute a quorum to do business, to be elected by the qualified electors at the annual election, who shall hold their office for three years: *Provided*, That the commissioners now in office, or hereafter appointed to office, shall continue in office until a new board of commissioners shall be elected at the first annual election.

SEC. 2. The commissioners first elected in any county in this territory, shall serve for the term of one, two and three years, to be by them determined by lot at their first session; and annually thereafter one commissioner shall be elected, and shall continue in office three years: *Provided*, That where there are three or more election districts in one county, there shall not be two commissioners serving on the board from one precinct at the same time.

SEC. 3. Whenever it shall become necessary to elect a commissioner to fill any vacancy occasioned by death, resignation, or removal, the person elected shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified.

SEC. 4. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit a certificate thereof with the clerk of the board of commissioners of his county, to be by him filed in his office.

SEC. 5. The board of commissioners shall hold four sessions annually at the county seat of their respective counties, commencing on the first Mondays of January, April, July, and October; at all of which they shall transact any business which may be required by law; *Provided*, That if the district court be in session on any of the above mentioned days, the commissioners shall meet on the Monday preceding, but no session shall be continued for a longer period than six days.

SEC. 6. The auditor of the county shall be the clerk of the

board of county commissioners, and attend their meetings, and keep a record of their proceedings, and the sheriff of county shall also, by himself or deputy, attend and execute their orders.

SEC. 7. The said board of county commissioners are hereby authorized to hold extra sessions, in any case they may think the business of their county requires the same; and ten days notice from any two of the commissioners to the third, shall be considered a sufficient call for said extra session: *Provided*, that no such extra session shall exceed three days.

SEC. 8. The commissioners shall each receive six dollars per day for each and every day they may be necessarily employed in transacting the county's business, and twenty-five cents a mile for every mile traveled in going to and returning from the meeting of said board, or in the discharge of any official duty, to be computed by the most usually traveled route.

SEC. 9. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be postponed to a subsequent meeting.

SEC. 10. The commissioners of each county shall have and use a seal, for the purpose of sealing their proceedings; and copies of the same, when signed and sealed by said commissioners, and attested by their clerk, shall be good evidence of such proceedings in the trial of any cause in any court of this territory; and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be considered a seal.

SEC. 11. The several boards of county commissioners are authorized and required: First. To provide for the erection and repairing of court houses, jails, and other necessary public buildings for the use of the county. Second. To lay out, discontinue, or alter county roads and highways, within their respective counties, and to do all other necessary acts relating thereto. Third. To license and fix the rates of ferriage, to grant grocery and other license authorized by law to be by them granted. Fourth. To fix the amount of taxes to be assessed according to the provisions of law, and cause the same to be collected. Fifth. To allow all accounts chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection, disbursement of any money belonging to the county or appropriated to its benefit. Sixth. To have the care of the county property, and management of the county funds and business; except in cases otherwise provided for,

and shall have no other powers except such as are, or may be given by law.

SEC. 12. Real estate belonging to any county may be sold by an agent duly appointed by the order directing such sale, who shall have the same powers as a commissioner appointed to sell real estate by the district or probate court.

SEC. 13. The board of county commissioners shall cause to be recorded in a book kept for that purpose, all their proceedings and their determinations touching all matters properly cognizable before them, and all books, accounts, vouchers, papers and accounts touching the business or property of the county shall be carefully kept by the clerk, and open to the inspection of every person.

SEC. 14. The commissioners aforesaid, at their first session after the annual election in each and every year, shall direct one of their number to preside at the meetings of their board; and he shall sign all documents requiring the signature of the board, and the signature of such person as chairman of the board of commissioners shall be as legal and binding as if the whole board had affixed their names: *Provided*, That in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present.

SEC. 15. It shall be the duty of the board of county commissioners to provide offices for the sheriff, the county auditor, and clerk of the district court; and also to provide all books and stationery necessary for the use of the board of county commissioners, the office of the county auditor, the clerk of the district court, the probate court, and county treasurer; and also to provide convenient desks for the preservation and security of the books and other documents in the several offices.

SEC. 16. At the July session, the board of county commissioners shall examine and compare the accounts and vouchers of the county auditor and county treasurer, count the funds in the county treasury, and shall make a full and accurate statement of the receipts and expenditures of the preceding year, and shall cause the same to be posted up at the court house door, and two other public places in their county, and if there shall be no court house, then at three public places in such county, and shall publish the same in some newspaper in such county, if there be any.

SEC. 17. The board of county commissioners, at their session in July in each year, shall receive and inspect the assessment roll returned by the assessors, and if it be found correct, it shall be accepted by the board in writing, signed by

the chairman and attested by the clerk, and cause the same to be filed in the office of the county auditor, where it shall remain as a matter of record, and shall be a guide for future assessors, so far as the same shall remain correct.

SEC. 18. It shall be the duty of the board of county commissioners, at their first session, to divide their respective counties into election precincts, in such manner as shall be most convenient for the population, and appoint a place for the elections therein; and they shall create new precincts from time to time as the population may require; and on the petition of ten voters resident more than ten miles from any place of election, it shall be the duty of the board of county commissioners to establish a precinct, and appoint judges of election therefor.

SEC. 19. The boards of county commissioners of the several counties of this territory are vested with the entire superintendence of the poor of their respective counties.

SEC. 20. The county commissioners of their respective counties shall have power to compound for a release, in whole or in part, of any debt due to their county, and for the use thereof, when in their opinion the interests of the county will not be prejudiced thereby; except in cases when they or either of them are personally interested.

SEC. 21. No county commissioner shall, directly or indirectly as contractor, be concerned in any contract for work to be done, or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law, for the use of the county; and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

SEC. 22. The commissioners are authorized and empowered to administer all oaths or affirmations necessary in the discharge of the duties of their office.

SEC. 23. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

SEC. 24. Any person may appeal from the decision of the board of commissioners, to the next term of the district court of the same county; such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the clerk of the board; and the party appealing shall give bond to the county,

with one or more sureties, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court.

SEC. 25. This act to take effect and be in force from and after the approval of the governor.

APPROVED February 18, 1864.

COMMON LAW.

AN ACT adopting the Common Law of England.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. The common law of England so far as the same is not inconsistent with the provisions of the constitution and laws of the United States, the organic act and laws of this territory, be the law of the land in this territory.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 4, 1864.

COMPENSATION TO OFFICERS.

AN ACT to provide increased compensation to officers in this Territory.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. The salaries of the following officers are hereby increased, in addition to the sums already provided by the United States government, as follows, viz: To the governor and justices of the supreme court, each, the sum of two thousand five hundred dollars; to the secretary of the territory, the sum of one thousand five hundred dollars.

SEC. 2. The per diem compensation of the members and attachees of the legislative assembly, is hereby increased, in addition to the compensation provided by the United States government, as follows: To each member of the assembly, the sum of six dollars; to each of the chief clerks, the sum of six dollars; to each of the assistant, engrossing, and enrolling clerks, the sum of five dollars; and to the chaplain of each branch of the legislative assembly, the sum of three dollars; to each of the sergeants-at-arms and door-keepers, the sum of four dollars. The per diem compensation to each page employed by the legislative assembly, shall be three dollars.

SEC. 3 The several sums appropriated in section one of this act, to the officers therein named, shall be paid quarterly, the first payment to be made on the first Monday in March, one thousand eight hundred and sixty-four, and regularly thereafter, and the territorial auditor shall issue his warrant on the territorial treasurer in accordance herewith.

SEC. 4. The several sums appropriated in section two of this act, to the officers therein named, shall be due and payable at the end of each week of their several sessions, commencing with the present session, out of any moneys not otherwise appropriated, and the territorial auditor shall issue his warrant to the territorial treasurer in accordance herewith.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 13, 1864.

CONVEYANCES.

AN ACT concerning Conveyances.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Conveyances of land, or of any estate, or interest therein, may be made by deed signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as hereinafter directed.

SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

SEC. 3. Every conveyance in writing whereby any real estate is conveyed or may be effected, shall be acknowledged or proved and certified in the manner hereinafter provided.

SEC. 4. The proof or acknowledgment of every conveyance affecting any real estate, shall be taken by some one of the following officers: First. If acknowledged or proved within this territory, by some judge or clerk of a court having a seal, or some notary public or justice of the peace of the proper county. Second. If acknowledged or proved without this territory, and within the United States, by some judge or clerk of any court of the United States, or of any state or territory, having a seal, or by any commissioner appointed by the governor of this territory for that purpose. Third. If acknowledged or proved without the United States, by some judge or clerk of any court of any state, kingdom or empire, having a seal, or by any notary public therein, or by any minister, commissioner, or consul of the United States appointed to reside therein.

SEC. 5. Every officer that shall take the proof or acknowledgment of any conveyance affecting any real estate, shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance; such certificate shall be, when granted by any judge or clerk, under the hand of such judge or clerk, and the seal of the court; when granted by any officer who has a seal of office, under the hand and official seal of such officer.

SEC. 6. No acknowledgment of any conveyance whereby any real estate is conveyed, or may be effected, shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by the oath or affirmation of a credible witness.

SEC. 7. The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

SEC. 8. Such certificate shall be substantially in the following form, to wit:

Territory of Idaho, }
County of ———, } ss

On this — day of —, A. D. 18—, personally appeared

before me, a notary public (judge, or other officer, as the case may be), in and for said county, A. B., personally known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

SEC. 9. When the grantor is unknown to the judge or other officer, taking the acknowledgment, the certificate may be in the following form, to wit:

Territory of Idaho, }
County of ———, } ss

On this ——— day of ———, A. D. 18—, personally appeared before me, a notary public (judge, or other officer), in and for said county, A. B., satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C. D., a competent and credible witness for that purpose, by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

SEC. 10. The proof of the execution of any conveyance whereby any real estate is conveyed or may be effected, shall be: First. By the testimony of a subscribing witness; or, Second. When all the subscribing witnesses are dead, or cannot be had, by evidence of the hand writing of the party, and of at least one subscribing witness.

SEC. 11. No proof of a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof, to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible person.

SEC. 12. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person described in, and who executed the same, that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

SEC. 13. The certificate of such proof shall set forth the following matters: First. The fact that such subscribing witness was known to the officer granting the certificate, to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness whose name shall be inserted in the certificate. Second. The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the

person whose name is subscribed to such conveyance as a party thereto, and is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

SEC. 14. No proof of evidence of the hand writing of the party, and of a subscribing witness, shall be taken unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

SEC. 15. No certificate of such proof shall be granted unless a competent and credible witness shall state on oath or affirmation that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature, (and stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

SEC. 16. Upon the application of any grantee in any conveyance required by this act to be recorded, or by any person claiming, under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment for proof of such conveyance, may issue a subpoena requiring such witness to appear before such officer, and testify touching the execution thereof.

SEC. 17. Every person who, being served with a subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matter aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain, without bail, until he shall submit to answer upon oath as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is to be taken, unless his reasonable expenses be first tendered.

SEC. 18. A certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof, as provided in this act, signed by the officer taking the same and under the seal of the officer, shall entitle such conveyance, with the

certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this territory.

SEC. 19. A married woman may convey any of her real estate by any conveyance thereof executed and acknowledged by herself and her husband, and certified in the manner hereinafter provided, by the proper officer taking the acknowledgment.

SEC. 20. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be effected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

SEC. 21. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance and shall acknowledge, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same.

SEC. 22. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same, to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance and acknowledged on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this act shall be valid.

SEC. 23. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be effected, proved, acknowledged, and certified in the manner prescribed in this act, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

SEC. 24. Every such conveyance and instrument in writing, acknowledged or proved and certified, and recorded in the

manner prescribed in this act, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

SEC. 25. Every conveyance of real estate within this territory, hereafter made, which shall not be recorded as provided for in this act, shall be void as against any subsequent purchaser, in good faith, and for a valuable consideration, of the same real estate or any portion thereof, where his own conveyance shall be first duly recorded.

SEC. 26. Every power of attorney, or other instrument, in writing, containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be effected, shall be acknowledged, or proved, and certified and recorded as other conveyances whereby any real estate is conveyed or effected are required to be acknowledged or proved, and certified and recorded.

SEC. 27. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

SEC. 28. Every conveyance, or other instrument conveying or effecting real estate, which shall be acknowledged, or proved, and certified as hereinafter prescribed, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

SEC. 29. When any such conveyance, or instrument, is acknowledged, or proved, certified and recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder, under the seal of his office, may be read in evidence without further proof.

SEC. 30. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

SEC. 31. If the party contesting the proof of any such conveyance or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness,

certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this territory.

SEC. 19. A married woman may convey any of her real estate by any conveyance thereof executed and acknowledged by herself and her husband, and certified in the manner hereinafter provided, by the proper officer taking the acknowledgment.

SEC. 20. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be effected, may take and certify the acknowledgment of a married woman to any such conveyance of real estate.

SEC. 21. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance and shall acknowledge, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same.

SEC. 22. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same, to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance and acknowledged on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this act shall be valid.

SEC. 23. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, or whereby any real estate may be effected, proved, acknowledged, and certified in the manner prescribed in this act, to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

SEC. 24. Every such conveyance and instrument in writing, acknowledged or proved and certified, and recorded in the

manner prescribed in this act, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

SEC. 25. Every conveyance of real estate within this territory, hereafter made, which shall not be recorded as provided for in this act, shall be void as against any subsequent purchaser, in good faith, and for a valuable consideration, of the same real estate or any portion thereof, where his own conveyance shall be first duly recorded.

SEC. 26. Every power of attorney, or other instrument, in writing, containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another, any conveyance whereby any real estate is conveyed or may be effected, shall be acknowledged, or proved, and certified and recorded as other conveyances whereby any real estate is conveyed or effected are required to be acknowledged or proved, and certified and recorded.

SEC. 27. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

SEC. 28. Every conveyance, or other instrument conveying or effecting real estate, which shall be acknowledged, or proved, and certified as hereinafter prescribed, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

SEC. 29. When any such conveyance, or instrument, is acknowledged, or proved, certified and recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder, under the seal of his office, may be read in evidence without further proof.

SEC. 30. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

SEC. 31. If the party contesting the proof of any such conveyance or instrument, shall make it appear that any such proof was taken upon the oath of an incompetent witness,

neither such conveyance or instrument, nor the record thereof, shall be received on evidence, until established by other competent proof.

SEC. 32. If any person shall convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not at the time of such conveyance have the legal estate in such-real estate, but shall afterwards acquire the same, the legal estate subsequently acquired, shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

SEC. 33. Any person claiming title to any real estate, may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he was in actual possession thereof.

SEC. 34. The term "real estate," as used in this act, shall be construed as co-extensive in meaning with lands, tenements, hereditaments, and possessory titles to public lands in this territory.

SEC. 35. The term "conveyance," as used in this act, shall be construed to embrace every instrument in writing by which any real estate, or interest in real estate, is created, alienated, mortgaged, or assigned, except wills, leases for a term not exceeding one year, and executory contracts for the sale or purchase of lands.

SEC. 36. Any mortgage that has been or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the recorder, or his deputy, who shall subscribe the same as a witness; such entry shall have the same effect as a deed of release duly acknowledged and recorded.

SEC. 37. Any mortgage shall also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or proved, and certified as hereinbefore prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

SEC. 38. Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such

record in the minutes of the discharge of such mortgage, made by the recorder upon the margin of the record thereof.

SEC. 39. Any mortgagee or his personal representative or assignee, as the case may be, after a full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall, for the space of seven days after being thereto requested, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

SEC. 40. All conveyances of real estate heretofore made and acknowledged, or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner and with like effect, as conveyances executed and acknowledged in pursuance of this act.

SEC. 41. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this act, but shall depend for its validity or legality upon the laws then existing and in force.

SEC. 42. Every interest in real estate, granted or devised to two or more persons, other than executors or trustees, as such shall be a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

SEC. 43. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of any real estate, hereafter executed, shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant.

SEC. 44. Where a remainder in lands or tenements, goods or chattels, shall be limited by deed, or otherwise, to take effect on the death of any person without heir or heirs of his or her body, or without issue, the word "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

SEC. 45. A future estate, depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent.

SEC. 46. When an estate shall by any conveyance be limited in remainder, to the son or daughter, or issue, or to the use of the son or daughter, or issue to be begotten, such son,

daughter, or issue born after the decease of his or her father, shall take the estate in the same proportion and in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

SEC. 47. Grants of rents, or of reversions or remainders, shall be good and effectual without attornment of the tenants, but no tenant who, before notice of the grant, shall have paid rent to the grantor shall suffer any damage thereby.

SEC. 48. The attornment of a tenant to a stranger shall be void, unless it be with the consent of the landlord of such tenement, or in pursuance to or in consequence of a judgment or decree of some court of competent jurisdiction.

SEC. 49. Lineal or collateral warrantees with all their incidents are abolished, but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be answerable upon such covenant, or agreement, to the extent of the land descended or devised to them in the case and in the manner prescribed by law.

SEC. 50. The words "grant," "bargain," and "sell," in all conveyances hereafter made, in and by which any estate of inheritance, possessory title or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyances, be construed to be the following express covenants, and none other, on the part of the grantor, for himself, his heirs, to the grantee, his heirs and assigns—First. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same real estate, or any right, title, or interest therein, to any person other than the grantee. Second. That such real estate is, at the time of the execution of such conveyance, free from encumbrances, done, made, or suffered by the grantor, or any person claiming under him; and such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

SEC. 51. All instruments of writing mentioned in this act, now copied in the proper books of record of the several counties in this territory, acknowledged and recorded in accordance with the laws in force and effect at the time such instruments were so acknowledged and recorded, shall, after the passage of this act, be deemed to impart to subsequent purchasers and encumbrancers, and all other persons whomsoever, notice of all such deeds, mortgages, powers of attorney, or other instruments, so far as to the extent the same may be found recorded, copied, or noted in the said books of record.

SEC. 52. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 16, 1864.

BONDS, DUE BILLS, ETC.

AN ACT Relating to Bonds, Due Bills, &c.

*Be it enacted by the Legislative Assembly of the Territory of Idaho,
as follows:*

SECTION. 1. That all bonds and due bills, and other instruments of writing not negotiable, hereafter made by any person, body politic or corporate, whereby such person promises or agrees to pay any sum or sums of money, or articles of personal property, or acknowledges any sum of money, or articles of personal property, to be due to any other person, shall be taken to be due and payable, and the sum of money or articles of personal property, therein mentioned, shall by virtue thereof be due and payable to the person to whom the bond, bill, or other instrument in writing is made.

SEC. 2. Any such bond, due bill, or other instrument in writing, not negotiable, made payable to any person, shall be assignable by endorsement thereon, under the hand of such person and of his assignee, in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee successively.

SEC. 3. Any assignee to whom such sum of money, or personal property, is by such endorsement made payable, or in the case of the death of such assignee, his heirs, executors, and administrators may, in his name, institute and maintain the same kind of action for the recovery thereof, against the person who made and executed such bond, bill, or other instrument in writing, or against his heirs, executors, or administrators, as might have been maintained against him by the obligee or payee, in the case the same had not been assigned; and in every such action in which judgment shall be given for the plaintiff, he shall recover his damages and costs of suit as in other cases: *Provided*, That the maker or obligor shall be allowed to set up in defence to the action of an assignee, any

matter which he might have set up to the action of the payee or obligee, where the same has arisen previous to notice of the assignment.

SEC. 4. Every assignor, his heirs, executors, or administrators, of every such note, bond, bill, or other instrument in writing, shall be liable to the action of the assignee thereof, his executors, or administrators, if such assignee shall have used due diligence, by the institution and prosecution of a suit against the maker of such note, bill, or other instrument in writing, or against his heirs, executors, or administrators, for recovery of the money or property due thereon, or damages in lieu thereof; *Provided*, That if the institution of such suit would have been unavailing, or that the maker had absconded, or left the territory or State where such assigned note, bond, bill, or other instrument in writing became due, or within twenty days thereafter, such assignee, his heirs, executors, or administrators, may recover against the assignor, or his heirs, executors, or administrators, as if due diligence by suit had been used. By "due diligence," shall be understood the institution of suit within sixty days after the maturity of the obligation.

SEC. 5. In any action which may hereafter be commenced in any court in this territory upon any of the instruments in writing mentioned in this act, by the obligee or payee thereof, if any of such instruments was made or entered into without a good or valid consideration, or if the consideration upon which any such instrument was made or entered into has wholly or in part failed, it shall be lawful for the defendant against whom such action shall have been commenced by his obligee or payee, to plead to such want of consideration, or that the consideration has wholly or in part failed; and if it shall appear that any of the aforesaid instruments was made and entered into without a good and valid consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover in accordance with the equity of the case.

SEC. 6. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing any such fraud or circumvention, or any assignee of such instrument.

SEC. 7. In all cases where any of the before mentioned instruments of writing are for the payment or delivery of personal property, other than money, and no particular place be

specified in such instrument of writing for the payment or delivery thereof, it shall be lawful for the maker of any such instrument of writing to tender, or cause to be tendered, on the day mentioned in such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument resided at the time of the execution thereof: *Provided, however,* if such property be too ponderous to be easily moved, or if the obligee or payee of such instrument had not, at the time of the execution of such instrument of writing, a known place of residence in the county where the maker resided, then it shall be lawful to tender such personal property at the place where the maker of such instrument resided at the time of execution thereof. Any tender made in pursuance of this section, shall be equally valid and legal, in case any such instrument of writing shall have been assigned in pursuance of the first section of this act, as if no such assignment had been made.

SEC. 8. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon; and the property thus tendered is here declared to be vested in, and belong to the legal owner and holder of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him: *Provided, however,* if any such property, so tendered, shall be of a perishable nature, or shall require feeding or other sustentation, and the person owning or holding any such instrument of writing be absent at the time of tendering the same, it shall be lawful for every person making such tender to preserve, feed, or otherwise take care of the same; and he shall have a lien on such tendered property for his reasonable trouble and expense of preserving, feeding, or sustaining such property, until payment be made for such trouble and expense.

SEC. 9. This act to take effect from and after its approval by the Governor.

APPROVED, January 16th, 1864.

FRAUDULENT CONVEYANCES.

AN ACT concerning Fraudulent Conveyances and Contracts.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. Every conveyance of any estate or interest in lands or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration of the same lands, rents, or profits, as against such purchasers, shall be void.

SEC. 2. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have legal notice thereof at the time of such purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge was privy to the fraud intended.

SEC. 3. Every conveyance or charge of or upon, any estate or interest in lands containing any provisions for revocation, determination or alteration of such estate or interest or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from said grantor, for a valuable consideration of any estate or interest so liable to be revoked, or, determined, although the same be not directly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

SEC. 4. When a power to revoke a conveyance of lands, or the rents and profits thereof, and to re-convey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents and profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

SEC. 5. If a conveyance to a purchaser under either of the two last preceding sections shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

SEC. 6. No estate or interest in lands other than for leases,

for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

SEC. 7. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate, by a last will and testament, nor prevent any trust arising or being extinguished by operation of law.

SEC. 8. Every contract for the leasing for a longer term than one year, or for the sale of any lands or interest in lands, shall be void, unless the contract or some note or memorandum thereof expressing the consideration be in writing, and be subscribed by the party by whom the lease or sale is to be made.

SEC. 9. Every instrument required to be subscribed by any person mentioned in the last preceding section, may be subscribed by the agent of the party lawfully authorized.

SEC. 10. Nothing contained in this act shall be construed to abridge the power of the courts to compel the specific performance of such agreements.

SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing or subsequent of such person.

SEC. 12. In the following cases, any agreement shall be void, unless such agreement or some note or memorandum thereof expressing the consideration be in writing, and subscribed by the party charged therewith: First. Every agreement that by the terms is not to be performed within one year from the making thereof. Second. Every special promise to answer for the debt or default or miscarriage of another. Third. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

SEC. 13. Every contract for the sale of any goods, chattels or things in action, for the price of two hundred dollars and over, shall be void, unless—First. A note or memorandum of such contract be made in writing and be subscribed by the parties to be charged therewith; or—Second. Unless they shall accept or receive a part of such goods or the evidences or some of them of such in action. Third. Or unless the buyer shall at the time pay some part of the purchase money.

SEC. 14. Whenever goods shall be sold at auction, and the auctioneer shall at the time of sale, enter in a salesbook a memorandum, specifying the nature and price of the property sold, the terms of the sale, the names of the purchasers, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

SEC. 15. Every sale made by a vender of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the thing sold or assigned, shall be conclusive evidence of fraud as against the creditors of the vender or the creditors of the person making such assignment, or subsequent purchasers in good faith.

SEC. 16. The term "creditors," as used in the last section shall be construed to include all persons who shall be creditors of the vender or assignor, at any time while such goods and chattels shall remain in his possession or under his control.

SEC. 17. Every instrument of writing required by any of the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

SEC. 18. Every conveyance or assignment in writing or otherwise, of any estate or interest in lands, or in goods in action, or of the rents or profits thereof made with the intent to hinder, delay or defraud creditors or other persons, of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered, with the like intent as against the persons hindered, delayed or defrauded, shall be void.

SEC. 19. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this act, as against creditors or purchasers, shall be equally void as against the heirs, successors, and personal representatives or assigns of such creditors or purchasers.

SEC. 20. The question of fraudulent intent, in all cases arising under this act, shall be deemed a question of fact, and not of law, nor shall any conveyance or change be adjudged fraudulent as against creditors or purchasers solely on the ground that it was not found on a valuable consideration.

SEC. 21. The provisions of this act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

SEC. 22. The term "bonds," as used in this act, shall be construed as co-extensive in meaning with lands, tenements, hereditaments and possessory land claims to public lands, and the terms "estate," and "interest in lands," shall be construed to embrace every estate and interest, present and future, vested and contingent, in lands as above defined.

SEC. 23. The term "conveyance," as used in this act, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, alienated, assigned or surrendered.

SEC. 24. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 21, 1864.

CORPORATIONS.

• AN ACT concerning Corporations.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Corporations for manufacturing, mining, mechanical, chemical, or agricultural purposes, for constructing telegraph lines, for making roads, for establishing ferries, for building bridges, for conveying water, or for the purpose of engaging in any species of trade or commerce, may be formed according to the provisions of this act; such corporations and members thereof being subject to the conditions and liabilities herein imposed, and to none other; *Provided*, That nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than fourteen hundred and forty acres of land, or to authorize an individual member of such company or association, in his corporate capacity, to hold, own or possess a number of acres to exceed eighty; and *Provided further*, That no corporation formed for agricultural purposes shall be allowed to hold any mineral lands under the provisions of this act.

SEC. 2. Any three or more persons who may desire to form a company for one or more of the purposes specified in the preceding section, may make, sign, and acknowledge before

some officer competent to take the acknowledgment of deeds, and file in the office of the county clerk, or clerk of the district court of the judicial district in which the principal place of business of the company is intended to be located, and a certified copy thereof, under the hand of the clerk and seal of said court in the said district, in the office of the secretary of the territory, a certificate in writing, in which shall be stated the corporate name of the company, the object for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the stock shall consist, the number of trustees, and their names, who shall manage the concerns of the company for the first three months, and the name of the city or town and county in which the principal place of business of the company is to be located.

SEC. 3. A copy of any certificate of incorporation filed in pursuance of this act, and certified by the county clerk, or the clerk of the district court in the county or district in which it is filed, or his deputy, or by the secretary of the territory, shall be received in all courts, and places, as presumptive evidence of the facts therein stated.

SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name, shall have succession for the period limited, and power: First. To sue and be sued in any court. Second. To make and use a common seal, and alter the same at pleasure. Third. To purchase, hold, sell and convey such real and personal estate as the purposes of the corporation shall require. Fourth. To appoint such officers, agents and servants as the business of the corporation may require, to define their powers, prescribe their duties, and fix their compensation. Fifth. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two thirds of the whole number of trustees, or by a vote of a majority of the trustees upon a written request signed by stockholders legally representing two-thirds of the whole stock. Sixth. To make by-laws, not inconsistent with the laws of this territory, or of the United States, for the organization of the company, the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

SEC. 5. The corporate powers of the corporation shall be

exercised by a board of not less than three trustees, who shall be stockholders in the company, and a majority of them citizens of the United States, and residents of this territory and who shall after the expiration of the term of the trustees first elected, be annually elected by stockholders, at such time and place, and upon such notice, and in such mode as shall be directed by the by-laws of the the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock; and the persons receiving the greatest number of votes shall be and act as trustees. When any vacancy shall happen among the trustees by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

SEC. 6. If it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the by-laws of the company; and all acts of trustees shall be valid and binding upon the company until successors shall be elected.

SEC. 7. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

SEC. 8. The first meeting of the trustees shall be called by a notice signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee or published at least ten days in some newspaper of the county in which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper published nearest thereto.

SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except between the parties thereto, until the same shall have so entered on the books of the company as to show the names of the parties by and to whom transferred, the number and designation of the same, and the date of the transfer.

SEC. 10. The trustees shall have power to call in, and demand from the stockholders the sums by them subscribed, at such times and in such payments or installments as they may deem proper; notice of each assessment shall be given to the

stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, or if none is published there, in some newspaper published nearest to such place. If, after such notice shall have been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company: *Provided*, That no sale shall be made except at public auction to the highest bidder, after a notice of thirty days, published as above directed in this section; and that at such sale the person who will agree to pay the assessment so due, together with the expense of advertisement and the other expenses of sale, for the smallest number of whole shares, shall be deemed the highest bidder.

SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and vote accordingly as a stockholder.

SEC. 12. Any stockholder may pledge his stock by a delivery of his certificate or other evidence of his interest, but may, nevertheless, represent the same at all meetings, and vote accordingly as a stockholder.

SEC. 13. It shall not be lawful for the trustees to make any dividend except from the surplus profits arising from the business of the corporation, nor to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock unless in the manner prescribed in this act; and in case of any violation of the provisions of this section the trustees under whose administration the same may have happened except those who may have caused their dissent therefrom to be entered at large in the minutes of the board of trustees at the time, or were not present when the same did happen, shall in their individual and private capacity, be jointly and severally liable to the corporation, and the creditors thereof, in the event of its dissolution, to the full amount so divided, withdrawn, paid out, or reduced: *Provided*, That this section shall not be so construed as to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts, upon the dissolution of the corporation or the extinction of its charter.

SEC. 14. The total amount of the debts of the corporation shall not at any time exceed the amount of the capital stock

actually paid in, and in case of any excess, the trustees under whose administration the same may have happened, except those who have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, and except those not present when the same did happen shall in their individual and private capacities be liable jointly and severally, to the said corporation and in the event of its dissolution, to any of the creditors thereof for the full amount of such excess.

SEC. 15. No corporation organized under this act, shall by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt, for circulation as money.

SEC. 16. Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company contracted or incurred during the time that he was a stockholder for the recovery of which joint or several actions may be instituted; and when a judgment in such action shall be recovered against joint stockholders, the court in the trial thereof shall apportion the amount of the liability of each, and in the execution thereof no stockholder shall be liable beyond his proportion so ascertained.

SEC. 17. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company, but the person pledging the stock shall be considered as holding the same and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust-fund would have been if he had been living and competent to act and hold the stock in his own name.

SEC. 18. It shall be the duty of the trustee, of every company incorporated under this act for the purpose of ditching, mining, or conveying water for mining purposes, to cause a book to be kept, containing the names of all persons alphabetically arranged, who are, or shall become stockholders of the corporation, and showing the number and designation of shares of stock held by them respectively, and the time when they respectively become the owners of such shares; also, a book or books in which shall be entered at length, in a plain and simple manner, all by-laws, orders and resolutions of the company and board of trustees, and the manner and time of their adoption; which books during the business hours of the day, Sundays, fourth of July and the twenty-fifth day of December

excepted, shall be open for the inspection of stockholders and the creditors of the company, each individual stockholder, and their duly authorized agents and attorneys, at the office or principal place of business of the company: *Provided*, That the office and books of every such company shall be kept, and the books of the company shall be open as aforesaid, in the county in which their principal business is transacted; and every stockholder and creditor as aforesaid, or their agents, or attorneys, shall have the right to make extracts from such books, or upon payment of reasonable clerks fees therefor, to demand and receive from the clerk or other officer, having the charge of such books; a certified copy of any entry shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company or any one or more of the stockholders.

SEC. 19. If the clerk or other officer having charge of such books shall make any false entry or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of an entry therein, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured, a penalty of one hundred dollars, and all damages resulting therefrom, to be recovered in any court of competent jurisdiction in this territory; and for neglect to keep up such books for inspection, and in the place provided for in the last section, the corporation shall forfeit to the people of Idaho territory, the sum of two hundred and fifty dollars for every day they shall so neglect, to be sued for and recovered before any court of competent jurisdiction in the county or district in which the principal business of such company is transacted; and it shall be the duty of the district attorney, within and for such district to prosecute such action in the name of, and for the benefit of the people of Idaho territory; and it is further provided, that, in case any such incorporated company shall refuse or neglect, for the space of one full year after the passage of this act, to comply with the provisions of this and the preceding section, then upon the showing of such facts by petition of any person aggrieved thereby, and due proof thereof before the district judge in the district in which such company's principal business is transacted, after such company shall have been duly notified thereof by summons, to be issued by said judge, citing such company to appear before such judge at a time and place therein mentioned which shall not be less than ten nor more than thirty days from the date of such summons, such company shall by said judge be declared

and decreed to be disincorporated so far as to deprive said company of all the privileges of this act, but in no manner to effect the remedy of all persons against such company to be exercised as this act provides: *Provided*, That nothing contained in the provisions of this section concerning the disincorporating of such companies shall be so construed as to prevent the enforcement of the other remedies in this section mentioned at any time after the passage of this act, except as herein provided.

SEC. 20. Any company incorporated under this act, may by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of capital.

SEC. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least four weeks in some newspaper published in the county where the principal place of business of the company is located, or in some newspaper nearest thereto; which notice shall specify the object of the meeting, the time and place where it is to be held, the amount to which it is proposed to increase or diminish the capital; and a vote of two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of capital stock.

SEC. 22. If at any meeting so called, a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees, and filed as required by the second section of this act and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

SEC. 23. Upon the dissolution of any corporation formed under this act, the trustees, at the time of the dissolution, shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by

be served in any court of the territory, and returned by the officer serving, before a magistrate of the county in which it is issued; the officer receiving such warrant, shall have the same power under the warrant, as by virtue of a warrant from any court or magistrate in the territory.

SEC. 11. It is hereby made the duty of the justice of the peace acting as coroner, immediately after the jury shall have rendered a verdict, to summon any two of said jurors, who, together with the said justice acting as coroner, shall make an inventory of the money and other property, found with the deceased person, and certify the same to be correct, and sign it; and the said justice shall, without delay, deliver to the treasurer of the county said inventory, and the money or property which may have been found with the deceased, unless taken from his possession by legal authority; and if the justice of the peace acting as coroner, fail to pay and deliver such inventory so certified, and such money or property, to the treasurer, the treasurer may recover the same by action at law.

SEC. 12. Upon payment of money into the treasurer's office in such cases, he shall place it to the credit of the county; if it be property, he shall proceed upon reasonable notice, to sell the same at public sale, and place the proceeds to the credit of the county.

SEC. 13. If the money be demanded within six years, the treasurer shall pay the same to the person legally authorized to receive it, after deducting the expenses of the inquest, and of the county in the matter, but the same may be paid at any subsequent time to the representatives of the deceased, upon an order from the tribunal invested with the power to allow claims against the county.

SEC. 14. The justice of the peace acting as coroner, shall before his claim is allowed for such inquest, file with such claim, an affidavit, setting out the amount of money or property found with the deceased, and the disposition of the same by him.

SEC. 15. After the inquest, if no one take charge of the body, it shall be the duty of the justice of the peace acting as coroner, to cause the same to be decently buried, and pay the expenses thereof from any money found with the deceased; if no such money is found, then the same shall be charged against the county; the justice of the peace acting as coroner, shall receive the sum of five dollars out of the county treasury, for attending to the burial of such body.

SEC. 16. . This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 6, 1864.

CIVIL ACTIONS.

Defining the time of Commencing Civil Actions.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Civil actions can only be commenced within the periods prescribed in this act, after the cause of action shall have accrued, except where a limitation is prescribed by statute.

SEC. 2. When the cause of action has already accrued, the party entitled and those claiming under him, shall have, after the passage of this act, the whole period herein prescribed, in which to commence an action.

SEC. 3. The people of this territory will not sue any person for, or in respect to any real property, or the issues or profits thereof, by reason of the right or title of the people to the same, unless—First. Such right or title shall have accrued within ten years before any action or other proceeding for the same shall have commenced; or, unless, Second. The people, or those from whom they claim shall have received the rents and profits of such real property, or of some part thereof, within the space of ten years.

SEC. 4. No action for the recovery of mining claims, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, or his assigns, was seized or possessed of such mining claim in question, within one year before the commencement of such action.

SEC. 5. No cause of action, or defense to an action, founded upon title to real property, or to rents, or to services out of the same, shall be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question, within five years before

the commencement of the act, in respect to which such action is prosecuted, or defense made.

SEC. 6. Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff for possession, within one year after the making of such entry, or within five years from the time when the right to bring such action accrued.

SEC. 7. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law ; and the occupation of the premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for five years before the commencement of such action.

SEC. 8. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim for five years, the premises so included shall be deemed to have been held adversely, except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

SEC. 9. For the purpose of constituting an adverse possession by any person claiming a title, founded upon a written instrument, or judgment or decree, land shall be deemed to have been possessed and occupied in the following cases : First. When it has been usually cultivated and improved. Second. When it has been protected by a substantial enclosure. Third. When (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for the use of pasturage, or for the ordinary uses of the occupant. Fourth. Where a known lot, or single farm, not exceeding one hundred and sixty acres in extent, has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed, according to the usual course or custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

SEC. 10. When it shall appear that there has been an

actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon any written instrument, or judgment or decree, the premises so actually occupied and no other, shall be deemed to have been held adversely.

SEC. 11. For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only: First. When it has been inclosed by a good and substantial inclosure. Second. Where it has been usually cultivated or improved.

SEC. 12. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of five years from the expiration of the tenancy, or when there has been no written lease, until the expiration of five years from the last payment of rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to his landlord; but such presumptions shall not be made after the periods herein limited.

SEC. 13. The right of a person to the possession of any real property, shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

SEC. 14. If a person entitled to commence any action for the recovery of real property, or to make an entry or defense, founded on the title to real property, or to rents, or service out of the same, be, at the time such title shall first descend or accrue, either—First. Within the age of twenty-one years; or Second. Insane; or Third. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence for a term less than life; or Fourth. A married woman.

SEC. 15. The time during which such disability shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such action, or the making of such entry or defense, if made within the period of five years after such disability shall cease, or, after the death of the person entitled, who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

SEC. 16. Actions, other than those for the recovery of real property, can only be commenced as follows: Within five years, an action upon a judgment or decree of any court of the United States, or of any State or territory within the

the commencement of the act, in respect to which such action is prosecuted, or defense made.

SEC. 6. Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim, unless an action be commenced by the plaintiff for possession, within one year after the making of such entry, or within five years from the time when the right to bring such action accrued.

SEC. 7. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of the premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for five years before the commencement of such action.

SEC. 8. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim for five years, the premises so included shall be deemed to have been held adversely, except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

SEC. 9. For the purpose of constituting an adverse possession by any person claiming a title, founded upon a written instrument, or judgment or decree, land shall be deemed to have been possessed and occupied in the following cases: First. When it has been usually cultivated and improved. Second. When it has been protected by a substantial enclosure. Third. When (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for the use of pasturage, or for the ordinary uses of the occupant. Fourth. Where a known lot, or single farm, not exceeding one hundred and sixty acres in extent, has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed, according to the usual course or custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

SEC. 10. When it shall appear that there has been an

actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon any written instrument, or judgment or decree, the premises so actually occupied and no other, shall be deemed to have been held adversely.

SEC. 11. For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only: First. When it has been inclosed by a good and substantial inclosure. Second. Where it has been usually cultivated or improved.

SEC. 12. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of five years from the expiration of the tenancy, or when there has been no written lease, until the expiration of five years from the last payment of rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to his landlord; but such presumptions shall not be made after the periods herein limited.

SEC. 13. The right of a person to the possession of any real property, shall not be impaired or effected by a descent being cast in consequence of the death of a person in possession of such property.

SEC. 14. If a person entitled to commence any action for the recovery of real property, or to make an entry or defense, founded on the title to real property, or to rents, or service out of the same, be, at the time such title shall first descend or accrue, either—First. Within the age of twenty-one years; or Second. Insane; or Third. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence for a term less than life; or Fourth. A married woman.

SEC. 15. The time during which such disability shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such action, or the making of such entry or defense, if made within the period of five years after such disability shall cease, or, after the death of the person entitled, who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

SEC. 16. Actions, other than those for the recovery of real property, can only be commenced as follows: Within five years, an action upon a judgment or decree of any court of the United States, or of any State or territory within the

United States. Within four years, an action upon any contract, obligation, or liability, founded upon an instrument of writing except those mentioned in the preceeding section. Within three years—First. An action upon a liability created by a statute, other than a penalty or forfeiture. Second. An act for trespass upon real property. Third. An action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property. Fourth. An action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud: Within two years—First. An action upon a contract, obligation, or liability, not founded upon an instrument of writing. Second. An action against a sheriff, coroner, or constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution. Third. An action upon a statute for a penalty or forfeiture, when the action is given, to an individual or to an individual and the territory, except where the statute imposing it prescribes a different limitation. Fourth. An action for libel, slander, assault, battery, or false imprisonment. Fifth. An action upon a statute for forfeiture or penalty to the people of this territory. Sixth. An action against a sheriff, or other officer, for the escape of a prisoner arrested or imprisoned on civil process. Seventh. An action on an open account for goods, wares, merchandise sold and delivered. Eighth. An action for any article charged in a store account.

SEC. 17. In an action brought to recover a balance due upon a mutual, open and current account, when there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

SEC. 18. An action for relief, not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued.

SEC. 19. The limitations prescribed in this act shall apply to actions brought in the name of the territory, or for the benefit of the territory, in the same manner as to actions brought by private parties.

SEC. 20. An action shall be deemed to have commenced, within the meaning of this act, when the complaint has been filed in the proper court, and summons issued and placed in the hands of the sheriff of the county, or other person authorized to serve the same.

SEC. 21. If, when the cause of action shall accrue against a person, he is out of the territory, the action may be commenced within the term herein limited, after his return to the territory; and if, after the cause of action shall have accrued, he depart from the territory, the time of his absence shall not be part of the time limited for the commencement of the action.

SEC. 22. If a person entitled to bring an action, other than for recovery of real property, except for a penalty of forfeiture, or against a sheriff or other officer, for an escape, be, at the time the cause of action accrued, either—First. Within the age of twenty-one years; or Second. Insane; or Third. Imprisoned on a criminal charge, or in execution under a sentence of a criminal court for a term less than his natural life; or Fourth. A married woman; the time of such disability shall not be a part of the time limited for the commencement of such action.

SEC. 23. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time and within one year from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his executors or administrators, after the expiration of that time and within one year after the issuing of letters testamentary or of administration.

SEC. 24. When a person shall be an alien, subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action: *Provided, however,* That nothing in this section shall be so construed as to consider any citizen or person of any state engaged in rebellion against the United States government as an alien.

SEC. 25. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal of the plaintiff, or if he die and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

SEC. 26. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

SEC. 27. No person shall avail himself of a disability unless it existed when his right of action accrued.

SEC. 28. When two or more disabilities co-exist at the time the right of action accrues, the limitation shall not attach until they are all removed.

SEC. 29. The preceding sections of this act shall not effect actions against directors or stockholders of a corporation to recover a penalty of forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party, of the facts upon which the penalty or forfeiture attached or the liability was created.

SEC. 30. No acknowledgment of promise shall be sufficient of a new continuing contract, whereby to take the case out of the operation of this statute, unless the same be contained in some writing signed by the party to be charged thereby.

SEC. 31. When the right of action has accrued, or shall accrue in any other territory from which Idaho territory is in part formed, in the classes of cases mentioned in section sixteen of this act, the time of commencing actions shall be limited in the respective classes of cases as prescribed in said section, but the period of limitation in such cases shall commence at the time of the accruing of such right of action in any of the territories from which Idaho territory is in part formed, and shall run continuously, excepting the time the party may have been absent from any of the above territories. A right of action shall be deemed to have accrued on a judgment, at the time of its rendition.

SEC. 32. An action upon any contract, obligation, or liability, for the payment of money, founded upon an instrument of writing executed out of this territory, or any other territory from which this territory is in part formed, can only be commenced as follows: First. Within one year, when more than two or less than five years have elapsed since the cause of action accrued.

SEC. 33. When the cause of action has arisen in any state, or other territory of the United States, or in a foreign country, and by the laws thereof an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this territory.

SEC. 34. An action upon any judgment, contract, obligation or liability, for the payment of money or damages, obtained, executed, or made out of this territory, or any other territory from which Idaho territory is in part formed, can only be commenced within two years from the time the cause of action shall accrue.

SEC. 35. This act to take effect and be in force from and after the date of its approval by the governor.

APPROVED, January 23, 1864.

CIVIL CASES IN COURTS OF JUSTICE.

AN ACT supplementary to an act entitled "An Act to regulate proceedings in civil cases in Courts of Justice in the Territory of Idaho."

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. In the commencement of civil actions in the district courts, and the probate courts, a copy of the complaint certified by the clerk of the court in which the action is brought, or by the attorney for the plaintiff, may be served with the summons, in which case the summons need not state "the cause and general nature of the action," nor the relief demanded, or any notice that the plaintiff will take judgment other than "that judgment by default will be taken against the defendant according to the prayer of the complaint;" and *Provided*, That where a copy of the complaint is not served with the summons, the defendant, within the time required to answer may, in person or by attorney, serve upon the plaintiff's attorney a notice of appearance, and a demand in writing of a copy of the complaint, specifying a place within the territory where it may be served, and such copy shall thereupon, and within the said length of time thereafter, be served accordingly, and after such service the defendant shall have the same length of time to answer, and shall cause to be served a copy of such answer upon the plaintiff's attorney, and a copy of all subsequent pleadings shall be served in like manner, but only one copy need be served upon the same attorney.

SEC. 2. There shall be endorsed on process or papers to be served, besides the name of the attorney or party who prosecutes or defends in person, his place of business, or if he shall neglect to do so, all written notices and other papers, except original or final process, or proceedings to bring a party into contempt, may be served on the attorney or such party, at his place of residence through the mail, by directing the same

according to the best information which can conveniently be obtained concerning his residence, and no place shall be specified in any notice at which any paper is required to be served upon an attorney or party who prosecutes or defends in person unless it be a city, town or locality where a post office is established.

SEC. 3. This act shall take effect and be in force from and after its approval by the governor.

APPROVED February 4th, 1864.

ELECTIONS.

AN ACT Relative to Elections.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That all white male inhabitants, over the age of twenty-one years, shall be entitled to vote at any election for delegate to congress, and for territorial, district, county, and precinct officers: *Provided*, They shall be citizens of the United States, and shall have resided in the territory four months, and in the county thirty days, where they offer to vote, next preceding the day of election.

SEC. 2. No person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony, or bribery, in this territory, or in any other territory, or state in the Union, unless restored to civil rights, shall be permitted to vote at any election.

SEC. 3. A general election shall be held in the several election precincts in this territory, on the first Monday of September in each year, at which shall be chosen all such officers as are by law to be elected, in such year, unless otherwise provided for.

SEC. 4. No person shall be eligible to the office of delegate to congress, to a seat as member of the council or house of representatives, or any territorial office, unless he has been a resident of the territory one year prior to the time of a general election.

SEC. 5. It shall be the duty of the county commissioners at their regular session in July, preceding the general election

to appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election, at each election precinct; and said commissioners shall also set off and establish election precincts, or districts, when it may be necessary; and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days of the receipt of said notices, to serve the same upon each of the said judges of election. If in any precinct, any of such judges do not serve, the voters of said precinct may elect a judge, or judges, to fill the vacancy, on the morning of the election, to serve at such election.

SEC. 6. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held in their respective precincts until other judges shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election; and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of election, at any election precinct within their respective counties.

SEC. 7. The clerks of the several boards of county commissioners, shall, at least thirty days before any general election, and, at least fifteen days before any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be, as nearly as circumstances will admit, as follows:

“Notice is hereby given that on the first Monday of September next, at the house of _____ in the county of _____, an election will be held for territorial county, town, or district officers, (naming the offices to be filled, as the case may be), which election will be open at eight o'clock in the morning, and will continue until six o'clock in the afternoon of the same day.

Dated this _____ day of _____, A. D. 18— (as the case may be).
Signed, _____ A. B.

Clerk of the board of county commissioners.

SEC. 8. The sheriff aforesaid, to whom such notices shall be delivered as aforesaid, shall cause to be put up, in three of the most public places of each election precinct the notices referring to such election precinct, at least ten days previous

to the time of holding any general election, and at least seven days previous to holding any special election; and in cases where towns and precincts may be set off by law as election precincts, said notices shall be posted as follows: One at the house where the election is authorized to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

SEC. 9. Previous to votes being taken, the judges and clerks of election shall severally take the following oath: "I, A. B., do solemnly swear (or affirm, as the case may be), that I will perform the duties of judge of the election (or clerk, as the case may be), according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same."

SEC. 10. In case there shall be no judge, or justice of the peace present at the opening of the election, or in case such judge, or justice, shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other, and to the clerks of the election, and the person administering the oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book.

SEC. 11. At all elections to be held under this act, the polls shall be opened at the hour of eight o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same; and, thirty minutes before the closing of the polls, proclamation shall be made in like manner, and the polls shall be closed in half an hour; but the board may, in their discretion, adjourn the polls at twelve o'clock at noon, for one hour, proclamation of the same being made.

SEC. 12. It shall be the duty of the clerks of the several boards of county commissioners, to furnish the sheriff with two poll books, who shall deliver the same to one of the judges of every election precinct in the county, at least five days before the time of holding any election.

SEC. 13. Every elector shall, in full view, deliver to one of the judges of election, a single ballot or piece of paper, on which shall be written or printed, the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill; said ballot may be open or folded as the voter may choose.

SEC. 14. The judge to whom any ticket may be delivered, shall, upon the receipt thereof, pronounce with an audible

voice, the name of the elector; and if no objection be made to him, and if the judge shall be satisfied that the elector is legally entitled to vote, he shall immediately put the ballot in the box, without inspecting the names thereon, if it be a folded ballot, the clerks of the election shall enter the name of the elector, and number, in the poll book.

SEC. 15. It shall be lawful for any elector to vote for delegate to congress, at any place of holding election within this Territory, for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such members of the legislative assembly, and such other officers, are to be elected: *Provided*, That an elector qualified to vote for part, and not all, of the officers to be chosen at any election, shall vote an open ticket, that the judges may determine the legality of such vote.

SEC. 16. If any person offering to vote shall be challenged, as unqualified, by any judge, or clerk of the election, or by any other person entitled to vote at the same poll, and either judge may challenge any person offering to vote, whom he shall know or suspect not to be qualified, the judge shall declare to the person so challenged, the qualifications of an elector; if such person shall then declare himself duly qualified, and the challenge not be withdrawn, one of the judges shall then tender him the following oath: "You do solemnly swear (or affirm, as the case may be) that you are qualified, according to the law regulating elections in this Territory, to vote for the officer (or officers, as the case may be) for whom you now propose to vote." And the clerks shall enter the names of all persons on the poll lists who are challenged and take such oath, and shall enter opposite their names, the word "sworn," in brackets, and such records shall be presumptive evidence of such votes.

SEC. 17. There shall be provided and kept by the judges of each election precinct (at the expense of the county,) a suitable ballot box with a lock and key.

SEC. 18. There shall be an opening in the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot box shall be carefully examined by the judges of the election, that nothing may remain therein, it shall then be locked and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

SEC. 19. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct

all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SEC. 20. The ballot box shall then be opened and the poll books placed therein; and such box shall then be locked and a covering, with a seal, placed on the opening in the lid of such box, so as to entirely cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

SEC. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the care of the box shall carefully keep it, without opening it, or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly, in that condition, deliver to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked.

CANVASSING BY THE JUDGES.

SEC. 22. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public and continue without adjournment until completed.

SEC. 23. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found to agree; the box shall then be opened, and the ballots found therein counted by the judges, unopened, except to ascertain whether each ballot is single; and if two or more ballots shall be found folded together, as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed, and if, on a comparison of the count with the poll list, and the appearance of such ballots, a majority of the judges shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

SEC. 24. If the ballots in the box shall be found to exceed in number the whole number of votes in the poll lists, they shall be replaced in the box (after being purged after the manner above stated), and one of the judges shall publicly draw out and destroy, therefrom, so many ballots, unopened, as shall be equal to such excess.

SEC. 25. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their

poll books, the names of every person voted for, and then, at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made, as nearly as circumstances will admit, in the following form, to wit:

At an election, held at the house of A. B., in the town (district or precinct) of ———, in the county of ———, and in the territory of Idaho, on the ——— day of ———, A. D. 18—, the following named persons received the number of votes annexed to their respective names, for the following described offices to wit: A. B. had ——— votes for delegate to congress; C. D. had ——— votes for territorial treasurer; E. F. had ——— votes for territorial auditor; G. H. had ——— votes for territorial superintendent of public instruction; I. J. had ——— votes for member of legislative council; K. L. had ——— votes for member of house of representatives, (and in like manner for any other persons voted for).

Certified by us,

M. N. }
O. P. } judges of election.
Q. R. }

Attest:

A. B. }
C. D. } clerks of election.

SEC. 26. The judges of election shall then enclose and seal one of the poll books, under cover, directed to the clerk of the board of commissioners of the county in which such election was held; and the packet, thus sealed, shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days from the close of the polls; and the other poll book, together with the ballot box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon; and the said book shall be subject to the inspection of any elector, at any time thereafter, who may wish to examine the same. The returns of election in unorganized counties, shall be made to the clerk of the county to which they are attached for judicial purposes.

SEC. 27. If any person, after being deputed by the judges of election to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, save, with the seal unbroken, he shall, for every such offence, and when convicted thereof, forfeit and pay the sum of five hundred dollars, and be imprisoned in the county jail until such fine is

paid, for the use of the county, the same to be recovered by a civil action, in the name of the county commissioners, in the district court.

OF THE CANVASS BY THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS.

SEC. 28. After the tenth day of the close of any election, or sooner if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, or any two county officers, shall proceed to open the returns and make abstracts of the votes; such abstract of votes for delegate to congress shall be on one sheet, the abstract of votes for members of the legislative assembly shall be on one sheet, and the abstract of votes for territorial and district officers shall be on one sheet, and the abstract of the votes for county and precinct officers shall be on another sheet; and it shall be the duty of such clerk of the board of county commissioners, immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county, and precinct officers respectively, and to deliver such certificate to the person entitled to it, on his making application to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons for the council, or house of representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days notice; and it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners shall order the compensation aforesaid to be paid out of the county treasury.

SEC. 29. The clerk of the board of county commissioners, immediately after making out the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail, express, or special messenger, to the secretary of the territory, at the seat of government; and it shall be the duty of the secretary of the territory, with the marshal of the territory, or his deputy, in the presence of the governor, to proceed, within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for delegate to congress, and the governor shall grant a certi-

ificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice, by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election.

SEC. 30. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory, within thirty days after the election, the said secretary may forthwith send a messenger to the clerk of the board of county commissioners, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the county treasury of the said county, the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county.

SEC. 31. Any person who shall receive a certificate of his election, shall be at liberty to resign such office, though he may not have entered upon its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of member of council, or house of representatives, by death, resignation, or otherwise, and a session of the legislature is to take place before the next annual election, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county, or district, to hold a special election to fill such vacancy, or vacancies, at a time appointed by the governor.

SEC. 32. When two or more counties are united in one council, or representative district, or for the election of any officer, the clerk of the board of the county commissioners, of the county or counties last established, shall, on the twentieth day after the election, unless a previous time is agreed upon, attend to the office of the clerk of the board of the senior county, and together with him, shall canvass the votes according to law, and the certificate of election shall be signed by such clerk, and be delivered to the proper persons at the office of the clerk of the senior county; and for the purposes of this act, the county first created shall be deemed the senior county; and when all the counties were created by the same act, the county first named therein shall be deemed the senior county.

SEC. 33. There shall be allowed out of the county treasury of each county, to the several judges and clerks of election, five dollars per diem, and to the person carrying the poll books from the place of election to the clerk's office, and to the clerks of the board of county commissioners, for attending at another

county to canvass votes, the sum of thirty cents per mile for going and returning, to be paid out of the county treasury.

SEC. 34. If any judge or clerk of election, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this act, he shall forfeit and pay to the county, a sum not less than fifty, nor more than one thousand dollars, and be imprisoned in the county jail until such fine is paid; the same to be recovered by a civil action, in the name of the county commissioners of the proper county, for the use of common schools in said county.

SEC. 35. The term of office, of all officers elected, shall begin on the first Monday in January next ensuing, unless some other express provision is made by law.

SEC. 36. In all elections, the person having the highest number of votes for any office, shall be deemed to have been elected.

SEC. 37. In counting the votes, the judges of election shall disregard misspelling or abbreviations of the names of the candidates for the office, if it can be ascertained from such votes for whom they were intended.

OF THE MANNER OF CONTESTING THE ELECTION OF COUNTY, TOWN, DISTRICT, OR PRECINCT OFFICERS.

SEC. 38. All contests of county and precinct officers, shall be tried in the proper county, and when any elector shall wish to contest such election, he shall file with the clerk of the board of county commissioners, within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall issue to the contestant a notice, to appear at the time and place specified in the notice, before the probate court, which notice, with a copy of such statement, shall be delivered to the sheriff, who shall, within five days, serve the same on the contestee, by delivering to him a copy of such notice and statement, or by leaving such copy at his usual place of residence.

SEC. 39. The probate court, at the time specified in the notice, and it shall appear by the sheriff's return that notice has been duly served on the contestee, shall proceed to try such contest. Each party shall be entitled to subpoenas and subpoenas *duces tecum*, as in ordinary cases at law, and the probate court shall hear and determine such contest in such manner as shall carry into effect the expressed will of a majority

of the legal voters, as indicated by their votes for such office, not regarding technicalities or error in spelling the name of any candidate for such office; and the clerk of said board shall issue a certificate to the person declared to be elected by said board, which shall be conclusive evidence of the right of said person to hold such office.

SEC. 40. This act shall not be construed so as to impair, in any way, the right of any person to contest any election in the manner otherwise provided by statute.

OF RESIGNATIONS, VACANCIES, AND REMOVALS, AND SUPPLYING VACANCIES.

SEC. 41. Resignations shall be made as follows: First. By the territorial officers, and by all officers elected by the legislature, to the governor. Second. By all county officers, to the county commissioners of their respective counties. Third. By all other officers holding their offices by appointment, to the body, board, or officer that appointed them.

VACANCIES.

SEC. 42. Every office shall become vacant on the happening of any of the following events, before the expiration of the term of such office: First. The death of the incumbent. Second. His resignation. Third. His removal. Fourth. Ceasing to be an inhabitant of the territory, district, county, or town, for which he shall have been elected or appointed, or within which the duties of his office are to be discharged. Fifth. His conviction of any infamous crime, or of any offence involving the violation of his official oath. Sixth. His refusal or neglect to take oath of office, or to give or render his official bond, or deposit such oath or bond within the time prescribed by law. Seventh. The decision of a competent tribunal declaring void his election or appointment.

SEC. 43. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

SUPPLYING VACANCIES.

SEC. 44. When a vacancy shall occur during a recess of the legislature, in any office which the legislature are authorized to fill by election, or which the governor, subject to confirmation of legislative council, is authorized to fill, the

governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

SEC. 45. When at any time there shall be, in any of the county or precinct offices, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of such offices: *Provided*, That in case there is no board of county commissioners, the governor may, on notice of such vacancy, create or fill such board.

SEC. 46. Every person so appointed in pursuance of the last two preceding sections, shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed; and they shall continue to exercise and perform the duties of the office to which they shall be so appointed until such vacancy shall be regularly supplied as provided by law.

SEC. 47. This act shall be in force and take effect from and after its approval by the Governor.

APPROVED, January 23d, 1864.

BILLS OF EXCHANGE, ETC.

AN ACT relative to Bills of Exchange and Promisory Notes.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or to his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and shall be negotiable in like manner as inland bills of exchange, according to the custom of merchants.

SEC. 2. Every such note, signed by the agent of any person under a general or special authority, shall bind such person, and shall have the same effect and be negotiable as above provided.

SEC. 3. The word "person" in the last preceding sections

shall be construed to extend to every corporation capable by law of making contracts.

SEC. 4. The payees and endorsers of every such note, payable to them at their order, and the holders of every such note payable to bearer, may maintain action for the sums of money therein mentioned, against the makers and endorsers thereof respectively in like manner as in cases of inland bills of exchange, and not otherwise.

SEC. 5. Such notes, made payable to the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

SEC. 6. No person within this territory shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, and signed by himself or his lawful agent.

SEC. 7. If such acceptance be written on paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who on the faith thereof, shall have received the bill for a valuable consideration.

SEC. 8. An unconditional promise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance, in favor of any person who, upon the faith thereof, shall have received the bill for a valid consideration.

SEC. 9. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

SEC. 10. The last four sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

SEC. 11. Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or who shall refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, shall be deemed to have accepted the same.

SEC. 12. The rate of damage to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this territory, shall be as follows: First.

If such bill shall have been drawn upon any person or persons in any of the United States east of the Rocky Mountains, fifteen dollars upon the hundred upon the principal sum specified in such bill. Second. If such bill shall have been drawn upon any person or persons in any part or place in Europe, or in any foreign country, twenty dollars upon the hundred upon the principal sum specified in such bill.

SEC. 13. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment of such principal sum shall have been demanded.

SEC. 14. If the contents of such bill be expressed in money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined without any reference to the rates of exchange existing between the territory and the place in which such bill shall have been drawn, at the time of demand, or of a notice of non-payment.

SEC. 15. If the contents of such bill be expressed in money of account or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange or the value of such foreign currency at the time of the demand of payment.

SEC. 16. When a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance as provided in the last four sections, and shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

SEC. 17. The damages allowed by this act shall be recovered only by the holder of the bill who shall have purchased the same, or some interest therein, for a valuable consideration.

SEC. 18. In all cases where notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory notes, or other negotiable instruments may be given by sending the same by mail, it shall be sufficient if

such notice be directed to the city or town where the person sought to be charged by such notice resides at the time of drawing, making, or indorsing such bill of exchange, promissory note, or other negotiable instrument, unless such person, at the time of affixing his signature to such bill, note, or other negotiable instrument, shall, in addition thereto, specify thereon the post office to which he may require the notice to be addressed.

SEC. 19. Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instruments made or drawn before this act takes effect.

SEC. 20. The following days, namely, the first day of January, the fourth day of July, and the twenty-fifth day of December, shall for all purposes whatsoever, as regards the presentation for payment or acceptance, and for the protesting and giving notice of the dishonor of bills of exchange, checks, and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week, usually called Sunday. Three days, commonly called days of grace, shall be allowed, except on sight bills or drafts; and any one of the holidays specified in this act, coming within the three days of grace, shall be counted as one of such days.

SEC. 21. This act shall take effect and be in full force from and after its passage.

APPROVED, January 16, 1864.

CREATING OFFICE OF DISTRICT ATTORNEY.

AN Act Creating the office of District Attorney in each of the organized judicial districts of Idaho territory, and to define their duties, privileges and powers, and fix their salaries, &c.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. There shall be a district attorney for each of the organized judicial districts, as now established by law; they shall hold their offices for the term of two years, and until their successors are elected, or appointed as required by law.

SEC. 2. They shall each, before entering upon the duties of their offices, execute and file with the judge of their respective districts, a bond to be approved by said judge, with one or more sureties, in the sum of two thousand dollars, conditioned that they will well and truly pay over all moneys collected by them as such district attorneys, and for the faithful performance of their duties; which bonds shall be forwarded by said judge, and filed in the office of the secretary of the territory.

SEC. 3. They shall be public prosecutors in their respective districts, and shall sign all bills of indictment that may be found by the grand jury, and prosecute on behalf of the people all public prosecutions, wherein the people of this territory are a party.

SEC. 4. They shall when requested by any member of the grand jury, give their opinion to them on any matter of law, pertaining to their duties as grand jurors, and shall when requested by any township or county officer, give to them their opinion on any matter of law pertaining to their duties, without fee, or reward; they shall also prosecute on behalf of the people, all forfeited recognizances, and shall receive to their own proper use ten per centum of all moneys thus collected; also, all forfeited bonds, and recognizances and undertakings, wherein the people are a party, or necessarily involved in the action.

SEC. 5. They shall receive an annual salary of fifteen hundred dollars, payable quarterly out of the territorial treasury, out of any moneys not otherwise appropriated upon an order drawn on the territorial treasurer by any judicial district judge for that purpose. They shall be entitled to the following fees, to-wit: For every conviction of felony, when the punishment is death, fifty dollars, and for every misdemeanor, the sum of fifteen dollars; payable out of the county treasuries where the conviction shall take place, as other moneys are drawn and paid out.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 22, 1864.

HOMESTEAD, ETC.

AN ACT to Exempt the Homestead, and other property from forced sale in certain cases.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The homestead, consisting of a quantity of land, together with the dwelling house thereon and its appurtenances, not exceeding in value the sum of three thousand dollars, to be selected by the husband and wife, or either of them, or other head of a family, shall not be subject to forced sale in execution, or any final process from any court, for any debt or liability contracted or incurred after the passage of this act. Said selection shall be made by either the husband or wife, or both of them, or other head of a family, declaring their intention, in writing, to claim the same as a homestead; said declaration shall state that they, or either of them, are married, or if not married, that he or she is the head of a family; that they, or either of them, as the case may be, are, at the time of making such declaration, residing with their family, or with the person under their care and maintenance on the premises, particularly describing said premises, and that it is their intention to use and claim the same as a homestead; which declaration shall be signed by the party making the same, and acknowledged and recorded as conveyances effecting real estate are required to be acknowledged and recorded, and from and after the filing for record of said declaration, the husband and wife shall be deemed to hold said homestead as joint tenants.

SEC. 2. Such exemption shall not extend to any mechanics', laborers' or vendors' lien lawfully obtained, but no mortgage or alienation of any kind, made for the purpose of securing a loan or indebtedness, upon the homestead property, shall be valid for any purpose whatsoever; *Provided*, That a mortgage or alienation to secure the purchase money, or pay the purchase money, shall be valid if the signature of the wife be obtained to the same and acknowledged by her separately and apart from her husband, nor shall said homestead property be deemed to be abandoned without a declaration thereof in writing, be signed and acknowledged by both the husband and wife, or other head of a family, and recorded in the same office and in the same manner as the declaration of claim to the same is required to be recorded; and the acknowledgement of

the wife to such declaration of abandonment shall be taken separately and apart from her husband; *Provided*, That if the wife be not a resident of this territory, her signature and the acknowledgement thereof shall not be necessary to the validity of any mortgage or alienation of said homestead; and *Provided further*, That in all cases when husband and wife, or other parties mentioned in this act, shall leave the county where such homestead is recorded, and establish a residence in some other county in this territory, such homestead shall be forfeited as far as the provisions of this act are concerned.

SEC. 3. Whenever execution has been issued against the property of a party claiming said property as a homestead, and the creditor in such judgment shall make oath before the county judge of the county in which such premises are situated, or before the judge of the district court thereof, that the cash value of such premises exceeds, to the best of the creditor's information and belief, the sum of three thousand dollars, it shall be the duty of such judge, upon notice to the debtor, to appoint three disinterested and competent persons as appraisers to estimate and report as to the value of such premises, and if the same exceed said sum, whether they can be divided so as to leave the premises amounting to the homestead exemption without material injury. If it appear upon such report, to the satisfaction of the judge, that the premises can be thus divided, he shall order the excess to be sold under the execution. If it appear that the premises cannot be thus divided, and the value thereof exceeds the exemption allowed by this act, he shall order the entire premises to be sold and out of the proceeds the sum of three thousand dollars to be paid to the defendant in execution, and the excess to be applied to the satisfaction of the execution: *Provided*, That no bid shall be received, by the officer making the sale, under three thousand dollars; and *Provided further*, That when the execution is against the husband whose wife is living, the judge may, in his discretion, direct the three thousand dollars to be deposited in court to be paid out only upon the joint receipt of the husband and wife, while the sum is thus deposited, or while it is being drawn and invested in another homestead, it shall possess all the protection against legal process, and the voluntary disposition of the husband as were the original homestead premises.

SEC. 4. The homestead and other property exempt from forced sale, of either husband or wife, be set apart by the probate court for the benefit of the surviving husband or wife and his or her legitimate children; and in the event of there being no survivor or legitimate children of either husband or

wife, then the property shall be subjected to the payment of their debts: *Provided*, That the exemption provided for in this act shall not extend to unmarried persons, except when they have the care and maintainance of minor brothers or sisters, or both, or brothers or sisters, minor children, or a father or mother, or both, or grand parents or unmarrid sisters living in the house with them.

SEC. 5. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, February 2d, 1864.

GOLD AND SILVER QUARTZ LEADS.

AN ACT relating to the Discovery of Gold and Silver Quartz Leads, and of the Manner of their Location.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That any person or persons who may hereafter discover any quartz lead or lode, shall be entitled to one claim thereon by right of discovery, and one claim each by location.

SEC. 2. That a quartz claim shall consist of two hundred feet in length along the lead or lode, by one hundred feet in breadth, covering and including all dips, spurs, and angles within the bounds of said claim, as also the right of drainage, tunneling, and such other privileges as may be necessary to the working of said claim.

SEC. 3. The locator of any quartz claim on any lead or lode shall, at the time of locating such claim, place a substantial stake, not less than three inches in diameter, at each end of said claim, on which shall be a written notice specifying the name of the locator, the number of feet claimed, together with the year, month, and day when the same was taken.

SEC. 4. All claims shall be recorded in the county recorder's office within ten days from the time of posting notice thereon: *Provided*, That when the claim located is more than thirty miles distant from the county seat, the time shall extend to fifteen days.

SEC. 5. Quartz claims recorded in accordance with the provisions of section four of this act, shall entitle the person so recording to hold the same to the use of himself, his heirs and assigns: *Provided*, That within six months from and after the date of recording, he shall perform or cause to be performed thereon, work amounting in value to the sum of one hundred dollars.

SEC. 6. Any person or persons holding quartz claims in pursuance of this act, shall renew the notice required in section three at least once in twelve months, unless such claimant is occupying and working the same.

SEC. 7. The conveyances of quartz claims heretofore made by bills of sale or other instruments of writing, with or without seals, shall be construed in accordance with the lawful local rules, regulations and customs of miners, in the several mining districts, and said bills of sale or instruments of writing concerning quartz claims, without seals, shall be *prima facie* evidence of sale, as if such conveyance had been made by deed under seal.

SEC. 8. Conveyances of quartz claims shall hereafter require the same formalities, and shall be subject to the same rules of construction as the transfer and conveyance of real estate.

SEC. 9. The location and pre-emption of quartz claims heretofore made shall be established and proved, when there is a contest, before the courts, by the local rules, customs and regulations of the miners in each mining district where such claim is located, when not in conflict with the laws of the United States or the laws of this territory.

SEC. 10. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

ROADS, ETC.

AN ACT concerning Roads, Highways, Trails, and Public Thoroughfares.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All roads and trails, streets and thoroughfares, shall be considered as public highways, which are, or have

been used as such, at any time within two years prior to the passage of this act, or which may hereafter be declared as such by the board of county commissioners within their respective counties: *Provided*, That in case any such public highway is now closed, the same shall not be opened without an order of the board of county commissioners.

SEC. 2. It shall be lawful whenever the public interests require it, for the board of county commissioners of each county, to divide the said county into a suitable number of road districts, and there shall be elected at each election, a road supervisor for each district.

SEC. 3. The county clerk of each county shall notify all persons who have been elected road supervisors, within ten days after such election has been made (held), informing them of such election, and describing the boundaries of their respective districts.

SEC. 4. The road supervisors shall cause all highways within their respective districts to be kept clear from obstructions, and in good repair, causing banks to be graded, bridges and causeways to be made, when the same may be necessary to keep the same in good repair, and to rebuild them when destroyed.

SEC. 5. The road supervisors shall have power to make use of any gravel or dirt for improving the roads which may be absolutely necessary from any adjacent lands, and the board of county commissioners may allow such damages, if there be any, to the owners of such lands, as they may deem just: *Provided*, That said commissioners shall be liable to pay damages to the county, at the suit of any citizen, if it should be proved that they have allowed extraordinary and extravagant damages.

SEC. 6. If in the opinion of a majority of the board of county commissioners of any county in this territory, the public road policy of that county so demand, there shall be levied and collected, on all able bodied men in each district, a road tax of three dollars, to be collected by the road supervisor, and the auditor of the county shall furnish him with blank receipts for the same, and the road supervisor shall spend the money collected by him, in the improvement of highways, and shall take receipts for all moneys expended by him, and settle with the auditor quarterly, and make a full exhibit of the expenditures made by him: *Provided*, If any person liable to pay road tax, as herein provided, will perform, or cause to be performed, one full days' work, it shall be full satisfaction for said three dollars.

SEC. 7. Whenever any contract for the improvement of

roads, trails, streets or thoroughfares is to be made, advertisement thereof shall be given by the supervisor of the district in which such improvement is to be made, by posting written notices in two of the most public places of his district, and by advertisement in one newspaper of the county, or, if none be published in the county, by notice posted on the court house door, at least ten days prior to the letting of such contracts, and all contracts shall be awarded to the lowest responsible bidder, subject to the approval of the board of commissioners: *Provided*, That the supervisor shall have power to make contracts for the improvement of roads, which shall not exceed the sum of fifty dollars, at their option, such contracts to be approved by the board of commissioners.

SEC. 8. The board of commissioners of each county, on presentation of petitions, praying for a county road, trail, or thoroughfare, to be laid out within the county, or praying for such road, trail, thoroughfare, or highway, to be laid out from the dwelling or plantation of any person, to any public road, or from one public road to another and designating the points therein, shall cause notice to be given to the parties owning the lands over which such road is to be located, and if objections by one or more of the owners shall be made, the board of commissioners shall consider and determine the same at their next regular meeting, and if they shall be of the opinion that such road, trail, street, or thoroughfare is necessary, they shall appoint two persons as viewers who shall view out and locate said road, trail, street, or thoroughfare, and upon a return of the certificate of the viewers, shall declare the same to be a public highway; when absolutely necessary, the county surveyor may be called on by the commissioners to assist in said location.

SEC. 9. Each road supervisor shall report to the board of commissioners quarterly, the amount of money collected and paid out by him, and to whom and for what paid, the number of days he has been in actual service, and also a list of delinquents; and said supervisor shall make an affidavit before a justice of the peace, or some other officer qualified to administer oaths, that the said report and delinquent list are correct, to the best of his knowledge and belief, and any person refusing or neglecting to pay the road tax required by this act, to the supervisor, within three days after the same shall have been demanded in writing of him by such supervisor, shall be considered a delinquent, and the supervisor shall proceed to levy, and sell at public vendue, to the highest bidder, after giving public notice as required by law on sales under execution, the property of such delinquent, or so much

thereof as shall be necessary to satisfy such delinquent's road tax and costs of making such sale.

SEC. 10. The road supervisors shall each receive for their services while in actual employment, such compensation as shall be allowed by the board of commissioners, not to exceed six dollars per day.

SEC. 11. If any person shall obstruct any public road, trail, street or thoroughfare, by felling any trees across the same, or by placing any other obstructions therein, or damaging, digging or deepening a creek or river, or its banks so as to destroy a ford or crossing, he shall be liable to prosecution before any justice of the peace, or any commissioner of the county or supervisor of the road district, on behalf of the county, and, on conviction thereof, shall be fined in a sum not exceeding fifty dollars, and shall forfeit five dollars for every succeeding day he shall suffer said obstruction to remain, after he shall have been ordered to remove the same by the supervisors. The road supervisors shall cause to be erected and kept in repair, posts and guide-boards with inscriptions thereon, in letters and figures, giving the direction and distance to the most noted places, to which such roadway leads.

SEC. 12. If any person shall wilfully destroy or injure any bridge or causeway, or remove or cause to be removed any of the plank or timber therefrom, or cut down or injure any tree, planted or growing as a shade tree, in any public highway, street or thoroughfare, by digging in it, he shall be liable to be prosecuted before any justice of the peace, by any commissioner of the county in behalf of said county, and, on conviction thereof, shall be fined in a sum not to exceed one hundred dollars.

SEC. 13. All fines collected under the provisions of this act, shall be paid into the county treasury for the use of the road district in which the same was collected.

SEC. 14. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 30, 1864.

PROHIBITION OF SALE OF ARDENT SPIRITS, ETC.

AN ACT to prohibit the sale of Ardent Spirits, Fire-arms, or Ammunition, to Indians.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Any person who shall after the passage of this act, sell, barter, give or in any manner dispose of any spirituous or malt liquor to any Indian or Indians; or any fire-arms or ammunition of any description whatever to any hostile Indians within this territory, shall be deemed guilty of a misdemeanor, and upon due conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for any term not exceeding six months, or by both such fine and imprisonment, in the discretion of such court.

SEC. 2. Justices of the peace within their respective counties, are hereby declared to have complete jurisdiction within the meaning of this act.

SEC. 3. White persons and Indians of lawful age, are hereby declared to be competent witnesses in the trial of all causes embraced within the meaning of this act.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED January, 25th, 1864.

JUDICIAL DISTRICTS.

AN ACT defining the Judicial Districts of this Territory, assigning the Judges, fixing the times and places of holding the supreme and district courts, and limiting the jurisdiction thereof, providing for special terms and adjournments, for the appointment of clerks, and the procuring of seals, and prescribing the mode of proceeding in the district courts.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. This territory is hereby divided into three ju-

dicial districts, as follows: The first judicial district shall embrace the counties of Idaho, Nez Perce, and Shoshone; the second judicial district shall embrace the county of Boise; the third judicial district shall embrace the county of Missoula, and that portion of the territory lying east of the summit of the Rocky mountains.

SEC. 2. The Hon. A. C. Smith, associate justice of the supreme court, is hereby assigned to the first judicial district; the Hon. Samuel C. Parks, associate justice of the supreme court, is hereby assigned to the second judicial district; and the Hon. Sidney Edgerton, chief justice of the supreme court, is hereby assigned to the third judicial district.

SEC. 3. The district court shall have original jurisdiction in civil cases, when the amount in dispute exceeds one hundred dollars exclusive of interest, and in all felonies, and in all other criminal cases not otherwise provided for.

SEC. 4. The appellate jurisdiction of said court shall extend to hearing upon appeal an order or judgment of a probate court, or justice of the peace, in the cases prescribed by statute.

SEC. 5. There shall be a term of the supreme court of this territory held at the territorial seat of government annually, commencing on the first Monday in August, and such term may be adjourned, from time to time, as said supreme court may order and direct by an entry made in the records of said court.

SEC. 6. The terms of the first judicial district court shall commence at the county seat of the respective counties as follows: In the county of Nez Perce, on the first Monday in January, the second Monday in April, and the first Monday in November, for the year eighteen hundred and sixty-four, and thereafter, annually, on the second Monday in April and first Monday in November; in the county of Shoshone, annually, on the first Monday in September; in the county of Idaho, annually, on the fourth Monday in May and the first Monday in October.

SEC. 7. The terms of the second judicial district court shall commence, annually, at the county seat of Boise county, on the second Monday in February, first Monday in July, and third Monday in September; and whenever a new county shall be legally organized out of any part of said county of Boise, then, in such new county, courts shall be held, annually, at the county seat of said county, commencing on the third Monday in October.

SEC. 8. The terms of the third judicial district court shall commence, annually, as follows: In the county of Missoula, at Hell Gate, on the third Monday in June; at East Bannack,

on the first Monday in April and the first Monday in November; and at Virginia City, on the first Monday in May and the first Monday in December.

SEC. 9. The first six days of every term of said courts holden at the county seat of Nez Perce county, at the county seat of Boise county, and at Virginia City, or so much thereof as may be necessary, shall be appropriated to the trial of causes arising in said districts, respectively, under the constitution and laws of the United States.

SEC. 10. The judge of any district court in said territory may, at his discretion, appoint special sessions thereof, to be held at the places where the stated sessions thereof are holden, or at any other place in his district; at which special sessions it shall be competent for said court to entertain jurisdiction of, and hear, and decide all cases, civil and criminal, at law, or in equity, cases in error or on appeal, issues of law, motions in arrest of judgment, motions for new trial, and all other motions; and to award executions, and other final process, and to do and transact all other business, and direct all other proceedings in all cases pending in the district court, including the trying of any cause, civil or criminal, by jury, in the same way, and with the same force and effect, as the same could or might be done at the stated sessions of said court: *Provided*, That the clerk of such district court shall, at least thirty days before the commencement of such special sessions, cause the time and place for holding the same to be published, for at least three weeks successively in one or more of the newspapers nearest to the place where the session is to be holden, or, in districts where there is no newspaper, by written or printed notices posted at the place of holding said court, and at three other of the most public places within the district; that all process, writs, and recognizances of every kind, whether respecting juries, witnesses, bail, or otherwise, which relate to the causes to be tried at the special sessions shall be considered as belonging to said sessions in the same manner as if they had been issued or taken in reference thereto; that any special session may be adjourned to any time, or times, previous to the next regular term of the district court for said county or division of such judicial district; that all business depending for trial at any special court shall, at the close thereof, be considered as of course removed to the next regular term of the district court for said county or division of such judicial district.

SEC. 11. Any judge of a judicial district in this territory may hold a term of court in any district in this territory in case of vacancy occurring through sickness, death, disqualifi-

cation, resignation, or absence from the district of the judge properly assigned to that particular district; and a written request from the judge of the district in which the court is to be held, or from the governor, to be entered on the records of said court, shall be sufficient authority to any judge for holding said court, and from the time of the service of said notice upon him, he shall have full power to act, as judge of said district during such absence, sickness, or disqualification, and do any act that may be necessary and proper for the holding of said court, including the appointment of a clerk, and the designation of a seal, in all cases when there is no clerk or seal.

SEC. 12. Whenever it shall so happen that the judge of a district court shall not attend at the commencement of the session of the said court, or at the time appointed on any adjournment thereof, to open and adjourn the said court in person, the judge may, by a written order to the clerk, adjourn the court from time to time, as the case may require, to any time or times antecedent to the next stated term of said court, and all suits, actions, writs, processes, recognizances, and other proceedings, pending in such court shall have day and be returnable to, and heard, tried and determined, at such adjournment, or adjournments, in the same manner, and with the same effect, as if the said court had been duly opened and held at the commencement of such session, or any other day appointed therefor, and all persons bound or required to appear at said court, either as jurymen, witnesses, parties, or otherwise, shall be bound and required to attend at such adjournment, or adjournments, accordingly: *Provided*, That in such absence of the judge, the clerk may adjourn the court from day to day, without an order, for any period not exceeding one week.

SEC. 13. Each judicial district shall have an appropriate seal, to be procured by the clerk thereof, under the direction of the judge. And the clerk of the supreme court shall procure an appropriate seal for the same, under the direction of the judges thereof, or a majority of them.

SEC. 14. The rules of pleading, practice, evidence, and of all other proceedings, both in civil and criminal cases, in the district courts, shall be the same as those in force in the territory of Washington on the first day of December eighteen hundred and sixty-three, till otherwise provided by law.

SEC. 15. In all cases of murder and felony, each of the three judicial districts of this territory shall be considered but one county, and persons accused may be indicted, tried, and punished, at any place of holding court in the district in which

the offence was committed, which is most convenient, or where a court may first be held, after the arrest of the offender.

SEC. 16. This act to take effect and be in force from and after its approval by the governor.

APPROVED December 18th, 1863.

PARTNERSHIPS.

AN ACT to provide for the formation of Partnerships.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Limited partnerships for the transaction of mercantile, mechanical, mining, or manufacturing business, within this territory, may be formed by two or more persons, upon the terms and subject to the condition and liabilities prescribed in this act, but nothing contained in this act shall authorize such partnerships for the purpose of banking or insurance.

SEC. 2. The said partnerships may consist of one or more persons, who shall be called general partners, who shall jointly and severally be responsible as general partners are by law, and of one or more persons who shall contribute to the common stock a specific sum, in actual cash payment, as capital, who shall be called special partners, and who shall not personally be liable for any debts of the partnership, except in the cases hereafter mentioned.

SEC. 3. The persons forming such partnerships, shall make and severally sign a certificate, which shall contain the name or firm under which said partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

SEC. 4. No such partnership shall be deemed to have been formed, until a certificate, made as aforesaid, shall be acknowledged by all the partners before some officer authorized to take acknowledgment of deeds, and recorded in the office of

the recorder of the county in which the principal place of business of the partnerships is located, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have a place of business, situated in different counties, a copy of the certificate, certified by the recorder in whose office it shall be so recorded, shall be filed and recorded in like manner in the office of the recorder in every such county. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners, for all the engagements thereof.

SEC. 5. The partners shall for three successive weeks immediately after such registry, publish a copy of the certificate above mentioned in a newspaper published in the county where the principal place of business is situated; and if no such paper be there printed, then in a newspaper in the territory nearest thereto; and in case such publication be not so made, the partnership shall be deemed general.

SEC. 6. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded and published, in like manner as is provided in this act for the original formation of limited partnerships and every such partnership which shall not be renewed in conformity with the provisions of this section, shall be deemed a general partnership.

SEC. 7. The business of the partnership shall be conducted under a firm, in which names of the general partners only shall be inserted, and the general partners only shall transact the business; if the name of any special partner be used in said firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership with any person except the general partner he shall be deemed and treated as a general partner.

SEC. 8. During the continuance of any partnership, under the provisions of this act, no part of the capital stock thereof shall be withdrawn, nor any division of interests, or profits be made so as to reduce such capital stock below the sum stated in the certificate before mentioned. If at any time during the continuance, or at the termination of the partnership, the property or assets shall not be sufficient to pay the partnership debts the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

SEC. 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient

for the payment of all their debts, shall be valid unless it provide for a distribution of the partnership property among all the creditors in proportion to the amount of their several claims.

SEC. 10. In case of such assignment, as provided in the preceding section, the assent of the creditors shall be presumed, unless within sixty days after notice thereof, they shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper printed in the county where the place of business, of the party making it is situated; or if no newspaper be printed in such county, then in some newspaper printed in the territory nearest thereto, within fourteen days after making such assignment.

SEC. 11. All suits respecting the business of such partnerships shall be prosecuted by and against the general partnership, except in those cases in which provision is made in this act, that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships, in which cases all the partners deemed general partners may join or be joined in such suits, and excepting also those cases where special partners shall be held severally responsible on account of any sums by them received or withdrawn from the common stock, as before provided.

SEC. 12. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office in which the original certificate or the certificate of renewal or continuation of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificates of the formation of such partnerships were published according to the provisions of this act; and, if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper in the territory, nearest thereto.

SEC. 13. In all cases not otherwise provided for in this act, the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners.

SEC. 14. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 4th, 1864.

JURORS.

AN ACT concerning Jurors.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. The probate judge and the sheriff of the county in which a term of the district court is or may be authorized by law to be held, shall, at least ten days prior to the commencement of said term of court, select the names of one hundred persons, lawfully qualified to serve as jurors, from the assessment roll of such county: *Provided*, That that number of names are contained on such assessment roll; and the names of the persons so selected, after being written on separate slips of paper, shall be deposited in a box to be provided for such purpose, and from the names so deposited the judge and sheriff aforesaid, shall alternately draw the names of thirty persons who shall constitute trial jurors, for the next ensuing term of such district court.

SEC. 2. The list of names so drawn certified to by the judge and sheriff as selected by them, shall thereupon be delivered to the clerk of the district court who, upon the receipt of the same, shall immediately issue a venire directed to the sheriff of the county, commanding him to summon the persons so named as trial jurors for such term of court, and the sheriff shall summons such named persons at least three days prior to the commencing of such term of court.

SEC. 3. The venire as provided for in section two of this act, shall be returned to the clerk of such district court, by the sheriff aforesaid, at least two days before the commencement of such term of court, and such venire, after its return, shall be subject to the inspection of any officer or attorney of the court.

SEC. 4. The box containing the residue of the names of the the jury list as aforesaid, shall, after such drawing, be locked up, and with the key, deposited with the clerk of the district court for such county, and by him safely kept for future use by the aforesaid officers, or as further provided in this act.

SEC. 5. When at any time during a term of the district court, it shall become necessary to summons other jurors than as hereinbefore provided for, the clerk shall in open court, under the direction of the judge thereof, from such box, draw a sufficient number of names to constitute additional trial jurors during such term of court; *Provided*, In case any such

jurors so drawn reside at a great distance from the place where the court is held, the court may, in its discretion, dispense with summoning such juror and order another to be drawn instead thereof, and the clerk shall issue a venire directed to the sheriff, for the summoning of such persons as trial jurors, and the sheriff shall proceed forthwith to summon the same as such trial jurors, and with all possible diligence, make return with his proceedings thereon.

SEC. 6. When at any term of the district court for the want of an assessment roll, or sufficient time is not permitted in which to prepare and draw the list of jurors as provided in this act, or when from any cause which may appear satisfactory to such district judge, such list has not been prepared or drawn, or the sheriff has not summoned such jurors, or the names selected as jurors, placed in such box be exhausted, it shall be lawful for such district judge and sheriff to prepare a list of the names of a sufficient number of persons, competent to serve as trial jurors, and deposit such names in a box, and at any time during the term of the court when a jury shall be required, names of persons shall be drawn therefrom by the clerk, as provided in section five of this act, and from time to time, other names may be selected and placed in such box and drawn therefrom as hereinbefore provided for and summoned as such trial jurors; *Provided*, That in the selection of names to be deposited in such box the name of no person from among the by-standers at such court shall be chosen and selected.

SEC. 7. It shall be the duty of the probate judge and any one of the county commissioners of the county at least ten days prior to the assembling of a court authorized by law, to inquire into public offences, by the intervention of a grand jury, to select the names of twenty four persons eligible to serve as jurors, and upon a venire being issued by the clerk of such court, the sheriff shall, at least two days prior to the meeting of the court, summons said persons to appear on the first day of the succeeding term and from such pannel, the court shall select seventeen persons who shall constitute such grand jury.

SEC. 8. When from any cause on the meeting of, or during the term of a court, authorized by law, to inquire into public offences by the intervention of a grand jury, and a grand jury is wanted, and there is not a sufficient number of jurors present, or those summoned have been discharged, a sufficient number to complete such grand jury, or constitute a new grand jury, as the case may be, shall be selected and sum-

moned in the same manner as is prescribed in section six of this act, and for the selection of trial jurors.

SEC. 9. Any person who is a qualified voter in this territory shall be competent to serve as a grand or petit juror.

SEC. 10. The following persons shall be exempted from serving as grand or petit jurors, viz: All priests or ministers of the gospel; attorneys and counsellors at law, practicing as such; practicing physicians; all county, township or territorial officers; editors, and regularly enrolled firemen in active service, not exceeding sixty-five in number to each company.

SEC. 11. Any person summoned as aforesaid to serve as a juror who shall fail to attend unless excused by the court, shall be fined in any sum not exceeding two hundred dollars, at the discretion of the court and be imprisoned in the county jail until such fine is paid.

SEC. 12. This act to take effect and be in force from and after its approval by the Governor.

APPROVED, January 29th, 1864.

CREATION OF OFFICES, ETC.

AN ACT creating offices in the territory of Idaho, declaring to whom resignations shall be made, when offices shall be deemed vacant, and the manner of filling such vacancies.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That there shall be elected or appointed as hereinafter declared, the following officers, to wit: First. One territorial treasurer. Second. One territorial auditor, who shall be ex-officio librarian. Third. One territorial superintendent of public instruction. Fourth. One delegate to congress. Fifth. Members of the council. Sixth. Members of the house of representatives. Seventh. One attorney for each judicial district. Eighth. For each county, one probate Judge, one county clerk, whose duty it shall be to act as clerk of the probate court; one sheriff, who shall be also tax collector; one assessor, one treasurer, one recorder, who shall be ex-officio auditor and clerk of the board of county commissioners; one surveyor, one county school superintendent, and

three county commissioners; for each election precinct, two justices of the peace, who shall be ex-officio coroners in their precinct, and two constables. The district attorneys and probate judges shall be elected by the qualified voters of the respective counties and districts; such district attorneys and probate judges shall hold their offices for two years unless otherwise provided by law, or until their successors be appointed and qualified, if not removed by the governor for cause published and filed in the office of the secretary of the territory. At every general election, there shall be elected in each road district by the qualified voters thereof one road supervisor.

SEC. 2. One delegate to congress shall be elected by the qualified electors of the territory; Members of the council and house of representatives, county clerks, sheriff, county assessor, county treasurer, county recorder, county surveyor, and county commissioners, shall be elected by the qualified electors of their respective districts or counties. Justices of the peace and constables shall be elected by the qualified electors of their respective precincts.

SEC. 3. The territorial treasurer, auditor and superintendent of public instruction shall be elected by the qualified electors of the territory, and shall hold their respective offices for the term of two years, and until their successors shall be elected and qualified.

SEC. 4. Members of the council, county clerks, sheriffs, county treasurers, county recorders, county assessors, county surveyors, county school superintendents, and justices of the peace, shall hold their respective offices for the term of two years, unless otherwise provided by law, and until their successors shall have been elected and qualified.

SEC. 5. Members of the house of representatives, constables and road supervisors, shall hold their respective offices for the term of one year, unless otherwise provided by law, and until their successors shall have been elected and qualified.

SEC. 6. County commissioners shall hold their offices as follows: At the first general election after the passage of this act, in each county there shall be elected three suitable persons resident in different parts of the county, as county commissioners, who shall hold their office respectively one, two and three years, and at each and every subsequent annual election one commissioner shall be elected who shall hold his office three years; the persons so elected at the first general election after they have qualified, shall assemble at the office of the county auditor, the said auditor shall prepare three blank slips of paper upon which respectively, he shall write the names of

the commissioners, he shall fold said slips of paper so written upon, so that they cannot be readily distinguished one from the other, and deposit them in a suitable box; he shall also prepare three other blank slips of paper upon which respectively, he shall write one year, two years, and three years, and fold them in a similar manner and deposit them in another similar box, he shall then proceed to draw from the first box one of the folded slips, and open it, and call aloud the name written thereupon, whereupon the commissioner whose name is called, shall proceed to draw from the second box a slip, in like manner shall the drawing of the remaining slips be conducted; each of the commissioners shall then deposit the folded slip which he had drawn, with the auditor, who shall note the time expressed on such slip, and declare the name of the commissioner who drew it, and said commissioner shall hold his office for the time expressed on such slip.

SEC. 7. All elective officers designated in sections one, two, three, four, five and six of this act, shall be filed at the general elections provided by law for this territory.

SEC. 8. Notaries public may be appointed by the governor, who shall hold their offices for the term of two years, unless sooner removed by the governor for cause, published and filed in the office of the secretary of the territory.

SEC. 9. Resignation shall be made as follows: First. By the territorial officers and by all officers elected by the legislature, to the governor. Second. By all county officers to the county commissioners in their respective counties. Third. By all other officers holding their office by appointment, to the body, board, or officer, that appointed them.

SEC. 10. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office: First. The death of the incumbent. Second. His resignation. Third. His removal. Fourth. His ceasing to be an inhabitant of the territory, district, county or precinct, for which he shall have been elected, or appointed, or within which the duties of his office are to be discharged. Fifth. His conviction of any infamous crime, or of any offence involving a violation of his official oath. Sixth. His refusal or neglect to take his oath of office, or to give, or renew his official bond, or deposit such oath or bond, within the time prescribed by law. Seventh. The decision of a competent tribunal declaring void his election or appointment.

SEC. 11. The governor shall also declare vacant the office of every officer required by law to execute an official bond,

whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

SEC. 12. Whenever a vacancy shall occur during the recess of the legislature, in any office which the legislature are authorized to fill by election, or which the governor subject to confirmation of the legislative council, is authorized to fill, the governor unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office until the next subsequent session of the legislature.

SEC. 13. When at any time there shall be in either of the county or precinct offices, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners, to perform the duties of either of said offices: *Provided*, That in case there is no board of county commissioners the governor may, on notice of such vacancy create or fill such board.

SEC. 14. Every person so appointed in pursuance of either of the last two preceding sections, shall, after taking the oath prescribed, and filing the requisite bond, if any continue to exercise and perform the duties of the office to which they shall be appointed, until such vacancy shall be regularly supplied as provided by law.

SEC. 15. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 29th, 1864.

TRESPASSING OF ANIMALS.

AN ACT to prevent the Trespassing of Animals upon Private Property.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. If any horse, mule, jack, jenny, hog, sheep, goat, or any head of meat cattle shall break into any ground inclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such inclosed premises for all damages sustained by such trespass; and if the trespass be repeated, by neglect of the owner or manager of such animals, he shall, for the second or every subsequent offence

or trespass, be subject to double the damages of such trespass to the owner of said premises.

SEC. 2. If any owner or occupier of any grounds or crops trespassed upon, provided said ground be inclosed within a fence, by animals entering upon or breaking into his or their grounds, whether inclosed by a lawful fence or not, shall kill, maim or materially injure the animal or animals so trespassing, he, she or they shall be liable to the owner of such stock for all damages and for the costs accruing from a suit for damages, when necessarily resorted to for their recovery; *Provided*, The owner or occupier of such grounds or crops so damaged and so trespassed upon may take up and safely keep, at the expense of the owner or owners thereof, after due notice to said owners of such known animals, or so many of them as may be necessary to cover the damages he may have sustained, for ten days; the same may be posted under the estray laws of the territory. And before restitution shall be had by the owner or owners of such animals, all damages done by them, as well also as the expenses of posting and keeping them, shall be paid. Any justice of the peace in the township or precinct shall have jurisdiction of all such reclamation of animals, together with the damages, expense of keeping and posting the same, when the amount claimed does not exceed one hundred dollars.

SEC. 3. When two or more persons shall cultivate lands under one inclosure, neither of them shall place or cause to be placed, any animal on his, her or their ground, to the injury or damage of the other or others, but shall be liable for all damages thus sustained by the other or others; and if repeated after due notice is given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

SEC. 4. This act shall take effect and be in force from and after its approval by the governor.

APPROVED January 29, 1864.

JAILS, ETC.

AN ACT in relation to common Jails and the Prisoners thereof.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. There shall be built, or provided, kept and maintained, in good repair, in each county, one common jail, at the expense of the county.

SEC. 2. The county commissioners shall have the care of building, inspecting, and repairing such jail, and shall once, every three months, inquire into the state thereof, as respects the security thereof, treatment and condition of the prisoners, and shall take all necessary precaution against escape, sickness, or infection.

SEC. 3. The sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same personally, or by his deputy, for whose acts he shall be responsible, and shall furnish all necessary sustenance, bedding, clothing, fuel, and medical attendance, for the prisoners committed to his custody, and the commissioners shall allow him reasonable compensation out of the county treasury, not exceeding two dollars per day, for the support of all prisoners confined on criminal process.

SEC. 4. The sheriff may appoint one or more jailors, who, in case of the absence or disability of the sheriff, or during any vacancy in the office, shall have the custody of the jail and the prisoners therein.

SEC. 5. If any sheriff or jailor, shall defraud any prisoner of his allowance, or shall not allow reasonable allowance and accommodation, he shall forfeit fifty dollars for each offence, to be recovered by an action of debt by the county commissioners, for the use of the county.

SEC. 6. Every jailor, five days prior to the opening of each term of the district court, in the district in which his county is situate, shall return to the commissioners of his county a certified list of all the prisoners then in his custody, with the time and causes of their confinement, and the length of the term for which they were committed; and he shall, also, return to said commissioners, within five days after the close of said term of said court, the name, and cause, and term of commitment, of every prisoner committed during said term of court; and any jailor, who shall neglect to make such re-

turn, for every such neglect shall pay a fine not exceeding fifty, nor less than twenty dollars, to be imposed at the next succeeding term of said court, on information of said commissioners of such neglect; and such fine shall go to the county.

SEC. 7. Persons may be committed under the authority of the United States, to any jail, upon payment of the expenses of supporting such prisoners, five dollars per month to the county for the use of the jail, and all legal fees of the jailor; and the sheriff shall receive such prisoners, and subject them to the same discipline, and treatment, and be liable for any neglect of duty as in case of other prisoners; but the county in no case shall be liable for any escape.

SEC. 8. Whenever any prisoner, under conviction for any criminal offence, shall be confined in any jail for any liability to pay any fine, forfeiture, or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability, may in lieu thereof, confine such person in the county jail, at the rate of two dollars per day, until the forfeiture or costs so imposed shall be satisfied; and in such case, the sheriff may hire out, or put to labor such person or persons, and shall charge the earnings of said prisoners to himself, for the sustenance of said prisoners; any surplus that may accrue from such labor, shall be paid into the county treasury to the credit of said prisoner.

SEC. 9. Whenever from any sufficient cause the sheriff shall think it expedient that the prisoners be removed from the jail of his county, on application in writing to the governor of the territory, by the sheriff and commissioners of such county, the governor may order said prisoners to be removed to some other jail, anywhere within the territory, to be detained in the same manner and by the same process in the jail from whence they were removed, until remanded back, by a similar process, or discharged according to law.

SEC. 10. All the expenses of removing and maintaining prisoners, incurred under the preceding section, shall be defrayed by the county from which they were so removed.

SEC. 11. All acts and parts of acts, inconsistent with this act, are hereby repealed; and this act shall take effect and after its approval by the governor.

APPROVED, January 13th, 1864.

WILD GAME.

AN Act relating to Wild Game.

*Be it enacted by the Legislative Assembly of the Territory of Idaho,
as follows:*

SECTION 1. That it shall be unlawful for any person or persons in the territory of Idaho, at any time after the first day of February, and before the first day of July in each year, to catch, kill, or destroy, or to pursue with such intention, any buffalo, deer, antelope, elk, mountain sheep, or goat, or to have in his possession or to expose for sale any of the wild game, or animals mentioned in this section, during the season when the killing, injuring, or pursuing is herein prohibited: *Provided*, That nothing in this act shall be so construed as to prohibit any person or persons from taking any animals at any time for the purpose of taming the same, or for scientific purposes.

SEC. 2. Any person or persons offending against this act on conviction thereof, shall forfeit, and pay for every such offence, a penalty of not less than five dollars, nor more than two hundred dollars, to be recovered with costs of suit in a civil action in the name of the people of the United States of the territory of Idaho, before any justice of the peace; the fine so collected shall be paid into the county treasury for the benefit of said county where such action shall be brought; all such fines and costs, shall be collected without stay of execution, and such defendant may, by order of the court, be confined within the county jail until such fines and costs shall have been paid.

SEC. 3. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 16th, 1864.

TIME OF MEETING OF LEGISLATURE.

AN ACT to fix the Time of Meeting of the Legislative Assembly of the Territory of Idaho.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. Hereafter the legislative assembly of this territory shall convene on the second Monday of November, of each year, at the territorial capitol, at the hour of twelve o'clock, (M).

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 1st, 1864.

SECURITIES.

AN ACT to Prevent Officers Dealing in certain Securities.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The territorial treasurer and auditor, and the several county, city or town corporation officers in this territory, are hereby expressly prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use and benefit of any person or persons whatever any territory, county, or city or town warrants, scrip, orders, demands, claim or claims, or other evidence of indebtedness against the territory, or any county, or city or town thereof.

SEC. 2. The territorial treasurer and auditor, and all county, city or town corporation officers, are prohibited from purchasing or being interested, or receiving, or selling, or transferring, or causing to be purchased, received, sold or transferred, either in person or by, or through the agency or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness against the territory, or any county, or city or town corporation thereof, either directly or

indirectly; nor shall any clerk or employee of any such officer, or officers, nor the commissioners employed or to be employed to fund any county, city or town corporation indebtedness, be allowed to make any such purchase, sale, or transfer, or bargain, in any manner for any territory, county, city or town corporation indebtedness be allowed to make any such purchase, sale, or transfer, or bargain, in any manner for any territory, county, city or town corporation, warrants, scrips, demands or other evidence of indebtedness against the territory, or any county, city or town corporation thereof.

SEC. 3. It shall be the duty of the territorial treasurer and the several county, city or town corporation treasurers, of the territory, to refuse to redeem any warrants, against the territory, or any county, city or town corporation thereof, whenever it shall come to their knowledge that such warrants, scrip or other evidence of indebtedness has been purchased, sold, received, or transferred in violation of the provisions of this act.

SEC. 4. All public officers herein referred to, shall have the right to sell or transfer any evidence of public indebtedness which may be issued according to law and held by such officers for services by them to the territory, county, city or town corporation, legally and justly due; and this act shall not be deemed to prevent the purchase, sale and transfer of any funded public indebtedness whatever of the territory or of any county, city or town corporation.

SEC. 5. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidence of public indebtedness, when he shall be informed by affidavit of the violation of any of the provisions of this act, by any officer whose account is to be settled, audited or paid by him, to withhold any settlement or payment of the same, and to cause said officer to be prosecuted for a felony; and on conviction any officer guilty of any violation of the provisions of this act, shall be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the territorial prison for a term of not less than two months; such conviction shall operate as a forfeiture of office, and the party convicted shall forever be disqualified from holding any office of trust or profit in this territory. Any person giving information which may lead to the conviction of any person under the provisions of this act, shall be entitled to one half of any fine assessed upon and collected from any such officer.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22d, 1864.

CERTAIN COUNTY TREASURERS.

AN ACT relating to certain County Treasurers, etc.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows :*

SECTION 1. The county treasurers of the counties of Nez Perce, Idaho, Boise, and Shoshone, shall, on or before the twentieth day of March, one thousand eight hundred and sixty-four, pay over to the territorial treasurer of the territory of Idaho, all moneys held by them as such county treasurers for the use of the territory under and by virtue of any law of Washington territory.

SEC. 2. The territorial treasurer is hereby required to receive any and all moneys thus paid by said county treasurers, or any of them, and receipt for the same to said treasurers, which receipt shall discharge them from all liability.

SEC. 3. For a failure to comply with the provisions of this act, they, and their sureties, shall be liable on their official bonds; and it is hereby made the duty of the several district attorneys in the several counties designated in the first section of this act, to prosecute said county treasurers before any court having jurisdiction of the same.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 13th, 1864.

MARKS FOR SIGNATURES.

AN ACT to provide for Marks instead of Signatures.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows :*

SECTION 1. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write; *Provided*, The person make his mark, the name of the person making the mark being written near it, and the mark

being witnessed by a person who writes his own name upon such instrument, as a witness.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 4th, 1864.

OBSERVANCE OF LORD'S DAY.

AN ACT for the better Observance of the Lord's Day.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. No person shall keep open any play house or theatre, race ground, cock pit, or play at any game of chance, for gain, or engage in any noisy amusements, on the first day of the week commonly called Lord's Day.

SEC. 2. No judicial business shall be transacted by any court, except deliberations of a jury, who have received a case on a week day, so called, and who may receive further instructions from the court, at their request, or deliver their verdict, nor any civil process be served by certifying or attesting officer, nor any record made by any legally appointed or elected officer, upon the first day of the week, commonly called the Lords Day; *Provided*, That criminal process may issue for apprehension of any person charged with crime, and criminal examination to be proceeded with.

SEC. 3. Any person or persons violating the provisions of the two preceding sections of this act, shall be punished, on conviction thereof, by a fine of not less than thirty dollars, nor more than two hundred and fifty dollars for each offence.

SEC. 4. Justices of the peace may have jurisdiction of all complaints arising under this act.

SEC. 5. On complaint of any person, before a justice of the peace, the person or persons found guilty of any offence specified in this act, shall be fined as aforesaid, to be paid to the treasurer of the territory, for the benefit of common schools; and the offender shall, in addition to the said fine, and the costs of prosecution, give bonds, with two good and sufficient sureties, in the sum of no less than two hundred dollars, for good behavior during any time within the discretion of the court, and stand committed until the whole order is complied with and the fine be paid.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 23, 1864.

PRESERVATION OF FILES OF NEWSPAPERS.

AN ACT to provide for the Preservation of files of the various Newspapers published in Territory of Idaho.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The secretary of the territory of Idaho is hereby authorized and empowered to subscribe for one copy of each of the newspapers at present published in the territory of Idaho, to wit: The Golden Age and the Boise News.

SEC. 2. It shall be the duty of the secretary of the territory carefully to preserve the files of each one of the said newspapers, and at the expiration of each quarter of three months, to cause the same to be securely and substantially bound the files of the Golden Age and Boise News, and other papers that may be printed within this territory after the passage of this act.

SEC. 3. It shall further be the duty of the secretary of the territory to receive such bound volumes into his custody and deposit them in the archives of the territory, where they shall be kept subject to the inspection of the public; but the secretary of the territory shall, at no time, permit any person or persons to remove said volumes from the office where said archives are preserved.

SEC. 4. The secretary of the territory is hereby authorized to draw upon the general fund for the payment of such expenditures as may be necessarily incurred in carrying out the provisions of this act.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22d, 1864.

MARRIAGES, COHABITATION, ETC.

AN ACT to prohibit Marriages and Cohabitation of Whites with Indians, Chinese and persons of African descent.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. If any white man or woman intermarry with any person of African descent, Indian or Chinese, the parties to such marriage shall be deemed guilty of a misdemeanor, and, on conviction thereof, be imprisoned in the territorial prison for a term not less than one year nor more than two years.

SEC. 2. If any person authorized to perform the marriage ceremony, shall unite any such person as mentioned in this act in marriage, he shall be deemed guilty of a misdemeanor, and, upon conviction, be subject to imprisonment in the territorial prison for a period not less than one year nor more than three years.

SEC. 3. That if any white person shall live and cohabit together with any person of African descent, Indian or Chinese, in a state of fornication, such person so offending shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, nor less than one hundred dollars, or be imprisoned in the county jail not less than six nor more than twelve months, or both such fine and imprisonment as the court may order; *Provided*, That nothing contained in any section of this act be so construed as to in any way affect any contract of marriage already entered into, nor the legitimacy of children born under such contract.

SEC. 4. All fines collected under this act shall be paid into the treasury of the county in which the conviction is had, and set apart for the common school fund of the territory.

SEC. 5. This act to take effect from and after the first day of March, eighteen hundred and sixty-four.

APPROVED January 6th, 1864.

OFFICIAL OATHS.

AN ACT to regulate Official Oaths.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That all officers elected, appointed or chosen in this territory, before entering upon the duties of their office, and all attorneys, counsellors and solicitors in chancery, in all the courts of this territory, before being admitted to practice, shall take and subscribe to the following oath before some person competent to administer oaths in this territory, viz: "I, (here name the person and office to which he has been elected, appointed or chosen) do solemnly swear (or affirm) that I will support, protect and defend the constitution and government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge and purpose, without any mental reservation or evasion whatever; and further, that I will well and faithfully perform all the duties which may be required of me by law, so help me God."

SEC. 2. All attorneys, counsellors and solicitors in chancery, who have been admitted to the bar of the courts of this territory prior to the passage of this act, shall not be allowed to appear or practice in any court of this territory on and after the first Monday in February, eighteen hundred and sixty-four, unless he shall take and subscribe to the foregoing oath.

SEC. 3. This act to take effect and be in force from and after its approval by the governor.

• APPROVED December 28th, 1863.

MONEY OF ACCOUNT AND INTEREST.

AN ACT In relation to Money of Account and Interest.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The money of account of this territory shall be

the dollar, cent and mill: And all accounts in the public offices, and other public accounts, and all proceedings in courts, shall be kept and had in conformity to this regulation.

SEC. 2. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry originally made, or any note, bond, or other instrument, expressed in any other money of account, but the same shall be reduced to dollars or parts of dollars, as hereinbefore directed, in any suit thereupon.

SEC. 3. In all judgments and decrees rendered by any court of justice, for any debt, damages, or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment or other proceedings, shall be considered erroneous for such omission.

SEC. 4. When there is no express contract in writing, fixing a different rate of interest, interest shall be allowed at the rate of ten per cent. per annum, for all moneys after they become due on any bond, bill, or promissory note, or other instrument of writing, or any judgment recovered before any court in this territory, for money lent, for money due on the settlement of account from the day on which the balance is ascertained, and for money recovered to the use of another.

SEC. 5. Parties may agree in writing for the payment of any rate of interest whatever on money due, or to become due on any contract; any judgment rendered on such contract shall bear interest at the rate of ten per cent. per annum until satisfied.

SEC. 6. This act to take effect from and after its approval by the governor.

APPROVED, January 13, 1864.

WRIT OF HABEAS CORPUS.

AN ACT concerning the writ of Habeas Corpus.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretense

whatever, may prosecute a writ of *habeas corpus* to inquire into the cause of such imprisonment.

SEC. 2. Application for such writ shall be made by petition signed either by the party for whose relief it is intended, or by some person in his or her behalf, and shall specify: First. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he or she is so confined or restrained, and the place where; naming all the parties, if they are known, or describing them, if they are unknown. Second. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists. Third. The petition must be verified by the oath or affirmation of the party making the application.

SEC. 3. Such writ of *habeas corpus* may be granted by any judge of the supreme court or district courts, at any time, in term or vacation.

SEC. 4. Any judge empowered to grant a writ applied for under this act, if it appear that the writ ought to issue, shall grant the same without delay.

SEC. 5. Such writ shall be directed to the officer or party having such prisoner in custody or under restraint, commanding him or them (as the case may be) to have the body of such person so imprisoned or detained, as is alleged by the petition, before the judge at such time as the judge shall direct, specifying in such writ the place where the petition will be heard; to do and receive what shall then and there be considered concerning such person, together with the time and cause of his or her detention, and have then and there such writ.

SEC. 6. If such writ be directed to the sheriff or other ministerial officer, it shall be delivered by the clerk of the court presided over by the judge issuing said writ, to such officer without delay.

SEC. 7. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the sheriff or his deputy, and shall be by him served upon such person, by delivering the same to him without delay.

SEC. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving it at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling house, or the place where the party is confined or under restraint. The service of said writ is made by serving a copy

and exhibiting the original, and where the posting is required by posting a copy.

SEC. 9. If the officer or person to whom such writ is directed shall refuse, after due service as aforesaid, to obey the same, it shall be the duty of the judge, upon affidavit, to issue an attachment against such person, directed to the sheriff, or if the sheriff be the defendant, to an elisor appointed for that purpose by the judge, commanding him forthwith to apprehend such person and bring him immediately before such judge; and upon being so brought, he shall be committed to the common jail of the county, until he make due return of such writ, or be otherwise legally discharged.

SEC. 10. The party upon whom such writ shall be duly served, shall state in his return plainly and unequivocally—First. Whether he have or have not the party in his custody, or under his power or restraint. Second. If he have the party in his custody or power, or under his restraint, he shall also state the authority and cause of such imprisonment or restraint, setting forth the same at large. Third. If the party be detained by virtue of any writ, warrant, or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the judge, on the hearing of such return. Fourth. If the officer or person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of *habeas corpus*, but such officer or person has transferred such custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place. Fifth. The return must be signed by the person making the same, and, except when such person shall be a sworn officer and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

SEC. 11. If the writ of *habeas corpus* be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or restraint, according to the command of the writ, except in the case specified in the next two sections.

SEC. 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot, without danger, be brought before the judge, the officer or person in whose custody or power he or she is, may state that fact in his return to the writ verifying the same by affidavit.

SEC. 13. If the judge be satisfied of the truth of such alle-

gation of sickness or infirmity, and the return to the writ is otherwise sufficient, such judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

SEC. 14. The judge before whom a writ of *habeas corpus* shall be returned, shall immediately after the return thereof proceed to hear and examine the return, and such other matter as may be properly submitted to his hearing and consideration.

SEC. 15. The party brought before the judge on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his or her imprisonment or detention is unlawful, or that he or she is entitled to his or her discharge.

SEC. 16. Such judge shall thereupon proceed in a summary way to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the law and justice of the case may require.

SEC. 17. Such judge shall have full power and authority to require and compel the attendance of witnesses by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the cause.

SEC. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint under which he or she is held.

SEC. 19. It shall be the duty of such judge, if the time during which such party may be legally detained in custody has not expired, to remand such party if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or upon any process issued upon such judgment or decree, or in cases of contempt of court.

SEC. 20. If it appears on the return of the writ of *habeas corpus* that the prisoner is in custody by virtue of the process from any court in this territory, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last preceding section: First. When the jurisdiction of such court or officer has been exceeded. Second. When the imprisonment was at first lawful, yet, by some act, omission, or event which has taken place afterwards, the party has become entitled to be discharged.

Third. When the process is defective in some matter of substance required by law, rendering such process void. Fourth. When the process, though proper in form, has been in a case not allowed by law. Fifth. When the person having the custody of the prisoner is not the person allowed by law to detain him. Sixth. Where the imprisonment or restraint is not authorized by any judgment, order, or decree of any court, nor by any provisions of law. Seventh. Where a party has been committed on a criminal charge without reasonable or probable cause.

SEC. 21. If any person be committed to prison, or be in custody of any officer, on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the ground of any defect of form in such warrant or commitment.

SEC. 22. If it shall appear to the judge, by affidavit, or upon the hearing of the matter, or otherwise, or upon the implication of the process or warrant of commitment and such other papers in the proceedings as may be shown to such judge, that the party is guilty of criminal offence or ought not to be discharged, such judge, although the charge be defectively or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as shall be ordered, to testify before such judge; and upon the examination he shall discharge such prisoner, let him or her to bail (if the offence be bailable), or recommit him or her to custody, as may be just and legal.

SEC. 23. Whenever any person may be imprisoned or detained in custody on any criminal charge, for want of bail, such person shall be entitled to a writ of *habeas corpus*, for the purpose of giving bail, upon averring that fact in his petition, without alleging that he or she is illegally confined.

SEC. 24. Any judge before whom any person who has been committed on a criminal charge, shall be brought on a writ of *habeas corpus*, if the same be liable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

SEC. 25. If any person brought before the judge on the return of the writ be not entitled to his discharge, and be not bailed, where such bail is allowable, such judge shall remand him or her to custody, or place him or her under the restraint from which he or she was taken, if the person under whose custody or restraint he or she was, be legally entitled thereto.

SEC. 26. In cases where any party is held under illegal re-

straint or custody, or any other person is entitled to the restraint or custody of such party, such judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

SEC. 27. Until judgment be given on the return, the judge before whom any party may be brought on such writ may commit him or her to the custody of the sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

SEC. 28. No writ of *habeas corpus* shall be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him or her, and the judge before whom he or she is to be brought.

SEC. 29. No person who has been discharged by the order of the judge upon a *habeas corpus*, issued pursuant to the provisions of this act, shall be again imprisoned, restrained or kept in custody for the same cause, except in the following cases: First. If he or she shall have been discharged from custody, on a criminal charge, and be afterwards committed for the same offence, by legal order or process. Second. If, after a discharge for defect of proof, or for any defect of the process, warrant or commitment in a criminal case, the prisoner may be again arrested, on sufficient proof, and committed by legal process for the same offence.

SEC. 30. Whenever it shall appear, by satisfactory proof, by affidavit, to any judge authorized by law to grant a writ of *habeas corpus*, that any one is illegally held in custody, confinement or restraint, and that there is good reason to believe that such person or persons will be carried out of the jurisdiction of the judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of *habeas corpus* can be enforced, said judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff or any constable of the county, commanding such officer to take such person thus held in custody, confinement or restraint, and bring him or them forthwith before such judge, to be dealt with according to law.

SEC. 31. Such judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

SEC. 32. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the judge who may have directed the issuing of such warrant.

SEC. 33. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in the case of a writ of *habeas corpus*, and the same may be denied, and like allegations, proofs and trial shall be had thereon, as upon the return to a writ of *habeas corpus*.

SEC. 34. If such party be held under illegal restraint or custody, he or she shall be discharged; and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

SEC. 35. Any writ or process authorized by this act may be issued and served on the first day of the week, commonly called Sunday, or any other non-judicial day.

SEC. 36. All writs, warrants, processes and subpoenas authorized by the provisions of this act, shall be issued by the clerk of the court, and (except subpoenas) sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

SEC. 37. If any judge, after a proper application is made, shall refuse to grant an order for a writ of *habeas corpus*, or if the officer or person to whom such writ may be directed shall refuse obedience to the command thereof, he or she shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars—to be recovered by an action of debt, in any court having cognizance thereof.

SEC. 38. Any person having in his custody or under his restraint or power any person for whose relief a writ of *habeas corpus* shall have been duly issued, pursuant to the provisions of this act, who, with the intent to elude the service of such writ or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such judge, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five thousand dollars, nor less than one thousand dollars.

SEC. 39. Every person who shall knowingly aid or assist in the commission of any offence specified in the last preceding section shall be deemed guilty of a misdemeanor, and punished as in the last preceding section.

SEC. 40. Every person convicted of any offence under the provisions of the last preceding sections, in addition to the punishment therein mentioned, may be also imprisoned in the county jail for a term not exceeding two years.

Sec. 41. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 22, 1864.

MARRIAGES AND DIVORCES.

AN ACT regulating Marriages and Divorces.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential.

Sec. 2. Every male person who shall have attained the full age of eighteen years, and every female who shall have attained the full age of sixteen years, shall be capable in law of contracting marriage, if otherwise competent: *Provided, however,* That nothing in this act shall be construed so as to make the issue of any marriage illegitimate, if the persons contracting said marriage, or either of them, shall not have been of lawful age at the time of the birth of said issue: and *Provided, further,* That all minors who shall have attained the age provided in this act for the contracting of marriage, shall be deemed in law to have attained their majority upon entering into the bonds of matrimony.

Sec. 3. No marriage shall be contracted while either of the parties shall have a husband or wife living, nor between parties who are nearer of kin than second cousins, computing by the rules of the civil law, whether by the half or the whole blood.

Sec. 4. Marriages may be solemnized by any justice of the peace in the county or judicial district in and for which he is elected or appointed, and they may be solemnized throughout the territory by any judge of a court of record, by any minister of the gospel, and by the governor of the territory.

Sec. 5. If any person intending to marry shall be under the age of twenty-one, if a male, or under the age of twenty years if a female, and shall not have had a former wife or husband, the consent in person, or in writing, of the parent or guardian having the custody of such minor, if he or she have

either a parent or guardian living in this territory, shall be given to the person solemnizing the marriage before such marriage shall take place.

SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare in the presence of the judge, minister, or magistrate, and the attending witnesses, that they take each other as husband and wife, and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

SEC. 7. When a marriage shall have been solemnized, the person solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residences of the parties, and of at least two witnesses present, and of the time and place of such marriage, and when the consent of the parent or guardian is necessary, stating that the same was duly given.

SEC. 8. Every person solemnizing a marriage shall make a record thereof, and within three months after such marriage shall make and deliver to the recorder of deeds, of the county where the marriage took place, a certificate under his hand containing the particulars mentioned in the preceding section. The certificate may be in the following form:

Territory of Idaho, } ss:
County of ____.

This is to certify that the undersigned, a justice of the peace of said county (minister of the gospel, or judge, etc., as the case may be), did on the ____ day of ____, A. D. 18—, join in lawful wedlock A. B. and C. D., with their mutual consent, in presence of E. F. and G. H., witnesses. J. P., Justice of the peace.

SEC. 9. All such certificates shall be filed and recorded by the said recorder, in a book to be kept by him for that purpose; and he shall receive a fee of one dollar from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage.

SEC. 10. Every person solemnizing a marriage who shall neglect to make and deliver to the recorder a certificate thereof, within the time above specified, shall forfeit for such neglect a sum not less than twenty, nor more than fifty dollars; and every recorder who shall neglect to record such certificate, so delivered, shall forfeit the like penalty.

SEC. 11. If any person shall wilfully make out a false certificate of any marriage or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned in the territorial prison not exceeding one year, or by both such fine and imprisonment.

SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not by law fully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall on conviction be fined in any sum not exceeding five hundred dollars, and be imprisoned in the territorial prison until such fine is paid.

SEC. 13. No marriage solemnized before any person professing to be a judge, justice, or minister, shall be deemed or regarded to be void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SEC. 14. The original certificate and record of marriage, made by the judge, justice, or minister, as prescribed in this act, and the record thereof by the recorder of the county, or a copy of such record, duly certified by such recorder, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

SEC. 15. Illegitimate children shall become legitimized by the subsequent marriage of their parents with each other.

SEC. 16. All fines and forfeitures arising in consequence of a breach of this act, shall be paid into the county treasury for the use of common schools; and in all cases when a violation of the provisions of this act is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the county treasurer.

SEC. 17. All marriages solemnized among the people called Friends or Quakers, in the form heretofore practiced and in use in their meetings, shall be good and valid.

DIVORCE AND ALIMONY.

SEC. 18. All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within this territory, be absolutely void, without any decree of divorce, or other legal proceedings.

SEC. 19. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when fraud shall have been proved, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

SEC. 20. In no case shall a marriage be adjudged a nullity on the ground that one of the parties was under age, of legal consent, if it shall appear that the parties, after they attained such age, had, for any time, freely cohabited together as husband and wife, nor shall the marriage of any insane person be adjudged void after his restoration to reason, if it shall appear that the parties freely cohabited together as husband and wife after such insane person was restored to a sound mind.

SEC. 21. When a marriage is supposed to be void, or the validity thereof is disputed for any of the causes mentioned in the two preceeding sections, either party may file a complaint in the district court of the county where the parties, or one of them resided, for annulling the same, and such complaint shall be filed and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

SEC. 22. Divorce from the bonds of matrimony may be obtained by complaint under oath to the district court of the county in which the cause therefor shall have accrued, or in which the defendant shall reside, or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided for six months before suit be brought, for the following causes: First. Impotency at the time of marriage, continuing to the time of divorce. Second. Adultery since the marriage, remaining unforgiven. Third. Willful desertion of either party by the other for the space of two years. Fourth. Conviction of felony or infamous crimes. Fifth. Habitual, gross drunkenness, contracted since marriage, of either party, which shall incapacitate such party from contributing his or her share to the support of the family. Sixth. Extreme cruelty in either party. Seventh. Neglect of the husband for the period of two years to provide the common necessities of life, when such neglect is not the result of poverty on the part of the husband, which he could not avoid by ordinary industry.

SEC. 23. If the defendant is not a resident of the territory, or cannot for any cause be personally summoned, the court, or judge, in vacation, may order notice of the pendency of the suit to be given in such manner and during such time as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay, and if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper printed in or nearest to the county in which

the suit is pending, three months in succession; and if the defendant fail to appear and make defense at the first term after such notice, or after thirty days personal notice of summons, the evidence may be heard, and the cause decided at that term; or compulsory process may be had to obtain an appearance or answer, if it be necessary to the disposition of property or of children.

Sec. 24. The court, in granting a decree, shall make such disposition of, and provisions for the children as shall appear most expedient under all the circumstances, and wisest for the present comfort and future well-being of such children; and when, at the commencement and during the pendency of said suit, it shall be made to appear to the court, or to the judge, in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been, or is likely to be taken or detained from her, or that any child of either party has been, or is likely to be taken or removed by, or at the instance of the other party, out of the county, or concealed within the same, it shall be the duty of the court or of such judge, in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced and made effectual by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of the courts, and to the circumstances of the case: *Provided*, The court, upon good cause shown, may change the custody of such minor children if they should be satisfied that such changes will be for the welfare of such children.

Sec. 25. In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of the children; and all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of, be regulated by the order of the court, shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted; and if, after the filing of the petition, it shall be made to appear probable to the court, or to the judge, in vacation, that either party is

about to do any act that would defeat, or render less effectual, any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

SEC. 26. The testimony of witnesses in suits for divorce shall be given orally in court, with the right to either party to take and use depositions on the same terms and in the same manner as in actions at law, and the proceedings, pleadings and practice shall conform to those at law as nearly as conveniently may be, but all preliminary and final orders may be in such form as will best effect the object of this act, and produce substantial justice.

SEC. 27. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery committed by the husband, the wife shall be entitled to the same proportion of his lands and property as if he were dead, but in other cases the court shall set apart such portion for her support, and the support of the children, as shall be deemed just and equitable.

SEC. 28. Whenever an order of divorce from the bonds of matrimony is granted in this territory by the court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties; and in all suits for a divorce brought by a female, if a divorce be granted, the court may for just and reasonable cause change the name of such female.

SEC. 29. Either party, on application to the court, may be entitled at such trial to have the issue of fact involved in such case, and presented by the pleadings, tried by a jury, in accordance with the general rules governing the trial of civil actions in the district court.

SEC. 30. This act shall take effect and be in force from and after the day of its approval by the governor.

APPROVED January 16th, 1864.

LIENS.

AN ACT for securing Liens to Mechanics and others.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. All artisans, builders, mechanics, lumber merchants, and all other persons performing labor, or furnishing material, to the amount of twenty-five dollars, for the construction or repairing of any building or other superstructure, shall have a lien on such building or superstructure for the work and labor done, or material furnished by each respectively.

SEC. 2. Every person wishing to avail himself of the benefits of this act, shall file in the county clerk's office of the county in which such building or superstructure is situated, within sixty days after the completion of such building or superstructure, a just and true account of the demands due him, after deducting all proper credits and offsets, and shall verify such account by his own oath, or the oath of some other person, and shall also file at the same time a correct description of the property to be charged with said lien. If such lien is claimed by a sub-contractor, journeyman, or any other person except the contractor performing labor or furnishing material, the account aforesaid shall be filed within thirty days after the work was done, or the materials were furnished by him; and within five days after the filing of said account as aforesaid, he shall serve a copy thereof on the owner of such building or superstructure, or on the agent of such owner, if the latter resides out of county in which such building or superstructure is situated, by delivering the same to him personally, or by leaving it at his usual place of residence. If such owner does not reside within the county, and has no agent therein, service of the copy aforesaid may be made by posting the same in a conspicuous place on the building or superstructure to be charged with such lien.

SEC. 3. Every sub-contractor, journeyman, laborer, or other person, performing labor or furnishing materials, shall, under the provisions of this act, have a valid lien upon the building or superstructure on which such labor was performed, or for which such materials were furnished, regardless of the claim of the contractor against the owner of such building or superstructure; but if any money be due, or is to become due under

the contract, from said owner to said contractor on being served with a notice by such sub-contractor, as provided in the last preceding section, said owner may withhold out of the first money due, or to become due under the contract, a sufficient sum to cover the lien claimed by such sub-contractor, journeyman, laborer, or other person performing the labor, or furnishing materials, until the validity thereof shall have been established by proper legal proceedings, if the same be contested; and if so established, the amount thereof shall be a valid offset to that extent in favor of the owner, against the contractor, and after such notice shall have been properly served upon such owner or owners, in case of failure to comply with the provisions of this section, then such sub-contractor shall have power to sue and recover from such owner or owners, whatever amount he may have lost by such failure. No attachment served on the funds in the hands of the owner of such building or superstructure, for claims other than expressed in this act, shall lie against the liens created by this act, nor shall such owner be held or legally bound to answer such attachment, until all claims under the contract, or liens created by this act, shall first be satisfied.

SEC. 4. The land upon which any building or superstructure shall be erected, together with a convenient space around the same, or so much as may be necessary for the convenient use and occupation of the premises, shall also be subject to the liens created by this act, if, at the time the labor was commenced, or the first of the materials were furnished the land belonged to the person who caused the said building or superstructure to be erected; but if such person owned less than a fee simple estate in said land, then only his interest therein shall be subject to such lien; and the liens created by this act shall be preferred to every other lien or incumbrance which shall have attached upon said property subsequent to the time at which the work was commenced, or the first of the materials were furnished, and also, to all mortgages and other incumbrances not recorded at the time such work was commenced, or the first of the materials were furnished; but nothing herein contained shall be construed as impairing any valid incumbrance upon the said land, duly made and recorded before such work was commenced or the first of such materials were furnished.

SEC. 5. The account required to be filed by the second section of this act, shall specify that it is the intention of the holder thereof to claim a lien upon the premises sought to be charged therewith, and it shall be the duty of the county clerk to file and record such notice and account, in a separate book

provided for the purpose, and from the time of such filing, all persons shall be deemed to have notice thereof.

SEC. 6. No such lien shall bind any building or superstructure for a longer period than six months after filing the same, unless suit be brought in a proper court within that time to enforce the same, or, if a credit be given, then within six months after the expiration of the credit; but no lien shall be continued in force for a longer time than two years from the time the work is completed, or the material furnished, by any agreement to give credit.

SEC. 7. Said liens may be enforced by suit in any court of competent jurisdiction, on setting forth in the complaint the particulars of such demand, with a description of the premises sought to be charged with said lien; and at the time of filing the complaint and issuing summons, the plaintiff shall cause a notice to be published at least once a week, for three consecutive weeks, in some newspaper published in the county, if there be one, and if not, then in such mode as the court shall direct, notifying all persons holding or claiming liens under the provisions of this act, on said premises, to be and appear in said court on the day specified therein, and during the regular term of said court, and to exhibit, then and there, the proof of said liens. On the appointed day, the court shall proceed to hear and determine the said claims in a summary way, or may refer the same to a referee, to ascertain and report upon said liens, and the amount justly due thereon; and all liens not so exhibited and proved, shall be deemed to be waived in favor of those which are so exhibited. On ascertaining the whole amount of said liens with which said premises are justly chargeable, as hereinafter provided, the court shall cause said premises to be sold in satisfaction of said liens and costs of suit, and any party in whose favor such judgment may be rendered, may cause the premises to be sold within the time and in the manner provided for sales on execution at law; and if the proceeds of such sale shall not be sufficient to satisfy the whole of such liens, established as aforesaid, then the same shall be apportioned according to the rights of the several parties.

SEC. 8. Nothing herein contained shall be construed to take away, or effect in any manner, any action which any such contractor, laborer, sub-contractor, or other person performing labor, or furnishing materials for such building or superstructure, would otherwise have against his employer.

SEC. 9. The holder of such lien, filed as aforesaid, on payment thereof, shall enter satisfaction of the same on record, at the request of any one interested in the property charged

with the lien, within ten days after such request, on the payment of the costs of such entry, and on failure to enter such satisfaction, he shall forfeit and pay to the party aggrieved, the sum of fifty dollars per day, until such satisfaction shall be entered, to be recovered in the same manner as other debts are recovered.

SEC. 10. When any person shall make an express contract in writing with the owners of any lot or lots in any city or town, or with the person or persons who were, at the time of such contract, in the actual possession of such lot or lots, by himself or themselves, or by his or their tenant or tenants, under *bona fide* claim of ownership, to grade, fill in, build upon, or otherwise improve the same, or the street in front of and adjoining the same, and shall go on and complete the said grading, filling in, or improving of said lot, or street adjoining the same, it shall be considered an improvement on said lot or lots, and he or they shall have a lien upon such lot or lots, for the amount contracted to be paid; and all the provisions of this act, respecting the mode of recording, securing, and enforcing mechanics' liens, shall apply thereto.

SEC. 11. When any person or persons shall make an express contract in writing with the owner or owners of any tract or tracts of land, or with the person or persons who were at the time of such contract, in the actual and *bona fide* possession of such tract or tracts of land, by himself or themselves, or tenant or tenants, to cut and cord the timber growing or being thereon, or any portion thereof, or for the purchase of said timber, or any part thereof, to be paid for when the same shall be cut and corded, and shall go on and complete such contract he or they shall have a lien on such wood so cut and corded, for the amount contracted to be paid, and may hold, take and retain possession of such wood until such contract price shall be paid, and if not paid within one month after the contract shall be completed, or work done, or purchase made as aforesaid, then all the provisions of this act, respecting the mode of securing and enforcing mechanics' liens, shall apply thereto.

SEC. 12. When any person or persons shall make an express contract in writing with any organized or incorporated mining company, or with the owner or owners of any lode or lodes of gold or silver bearing quartz, or of any other metal of value, or with the person or persons who were, at the time of such contract, in the actual possession of such lode or lodes, by himself or themselves, under *bona fide* claim of ownership, to cut, excavate, or run a tunnel, from any given point, into or through said lode or lodes, or sink a shaft thereon to the depth of fifty feet or more, and shall go and complete such contract,

he or they shall have a lien upon such lode or lodes, together with the tunnel thereto cut and run, or the shaft thereon sunk for the amount contracted to be paid; and all the provisions of this act respecting the mode of recording, securing and enforcing mechanics' liens shall apply thereto.

SEC. 13. This act shall be so construed as to include in its provisions bridges, ditches, flumes, aqueducts, to create hydraulic power for mining purposes, and all improvements on mining claims.

SEC. 14. Any artisan or mechanic who shall make, alter, or repair any article of personal property, at the request of the owner, or legal possessor of such property, shall have a lien on such property so made, altered, and repaired, for his just and reasonable charges for his work done and materials furnished, and may hold and retain possession of the same until such reasonable and just charges shall be paid, and if not paid for within two months after the work shall be done, such mechanic or artisan may proceed to sell the property by him so made, altered or repaired, at public auction, by giving three weeks notice of such sale, by advertisement in some newspaper published in the county in which the work may be done, or, if there is no such newspaper, then by posting up notices of such sale, in three of the most public places in the town where such work was done, and the proceeds of said sale shall be applied, first, to the discharge of such lien, and the costs and expense of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

SEC. 15. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 23d, 1864.

LOCAL AND SPECIAL LAWS.

AN ACT

To Organize the County of Owyhee.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. That all that part of said territory lying south of Snake river, and west of the summit of the Rocky Mountain chain be, and the same is hereby organized into a county to be called Owyhee.

SEC. 2. That all quartz claims that have been taken or may hereafter be taken within the bounds of the said county of Owyhee, be recorded in the county auditor's office of said county, in a well bound book, or books, with notes, or margins indicating the name or names of the person or persons who located the same; as also any and all transfers that have been or may hereafter be made in quartz claims; which said books notes, and margins, shall be open to inspection by any and all persons whatever.

SEC. 3. That the county seat of the said county of Owyhee shall be, until otherwise ordered, at such place as the county commissioners of said county may select.

SEC. 4. This act to be in force when approved by the governor of the territory.

APPROVED, December 31, 1863.

AN ACT

Creating the County of Oneida.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That all that portion of Idaho territory, within the following boundaries be, and the same is hereby created the county of Oneida, to wit: Commencing at the point where the intersection of the meridian of longitude one hundred and thirteen degrees with the northern boundary of Utah territory, and running from thence north along said meridian one hundred and thirteen degrees to the Snake river, thence up said river in an eastern direction, to the one hundred and twelfth meridian, thence north on said meridian to the summit of the Rocky mountains, and from thence along said summit in an eastern direction, and in a southern direction, to the boundary of Colorado territory, and from thence west along said boundary of Colorado to Utah territory, and from thence along the said northern boundary of Utah to place of beginning; and the county seat of said county of Oneida is hereby located at Soda springs.

SEC. 2. This act shall take effect and be in force from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

To provide for the Compensation of Hill Beachey for Services rendered the Territory.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. There shall be and is hereby appropriated out of the territorial treasury the sum of six thousand two hundred and forty-four dollars, to be paid to Hill Beachey, for money expended, and time employed in the pursuit, and arrest and detention of David Renton, James P. Romaine, and Chris-

topher Lower, who were indicted, tried and convicted, at the January term of the district court of the first judicial district of this territory, for the murder of Lloyd Magruder, Charles Allen, William Phillips, and two others, names unknown.

SEC. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer, for the sum named in the first section of this act, in favor of Hill Beachey, which shall be paid out of any money in the treasury not otherwise appropriated.

SEC. 3. This act shall take effect and be in force from and after its approval by the governor.

APPROVED February 2, 1864.

AN ACT

Changing the Names of the Towns of Bannock and Buena Vista.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That the names of the towns of Bannock and Buena Vista, in Boise county, are hereby changed to that of Idaho.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 30th, 1864.

AN ACT

To Incorporate Virginia City, in Madison County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That the boundaries of Virginia city shall be as follows: Commencing at a point known as Bummer Davis'

hill claim, on the west side of a small dry gulch, and on the south side of Fairweather gulch, thence north three-fourths of a mile, thence east one mile, thence south three-fourths of a mile, thence west to place of beginning.

SEC. 2. The inhabitants of said town are hereby constituted a body politic and corporate under the name and style of "Virginia City." They shall have power to sue and be sued, plead and be impleaded, in all courts whatsoever; to receive property personal and real, and dispose of the same in any way for the benefit of the town.

SEC. 3. The government of said city shall be vested in a mayor, and a council, to consist of four members, to hold their offices for one year, and until their successors are elected and qualified, and there shall be appointed annually, one town clerk, one marshal, one treasurer, and such other officers as the mayor and council shall think proper.

SEC. 4. The first election for city officers may be held at any time within two years after the acceptance of this charter by the inhabitants of Virginia City, and at such election all persons shall be entitled to vote who were legal voters at the county election, and residents of said Virginia City for thirty days next preceding the day of such election. The first city election shall be held at such time as a majority of the legal voters of said city may designate, such election shall be conducted in the same manner and governed by the same rules, as near as can be, as county elections.

SEC. 5. The mayor of said city shall preside at all meetings of the city council; said council shall have power and authority to levy taxes for municipal purposes, not to exceed one per cent. per annum, on all taxable property within the limits of said city; to make such regulations as shall promote the health, peace, cleanliness and good order of the city, and such as shall tend to prevent and restrain any disturbance or disorderly conduct, riot, drunkenness and indecent or immoral practices within the limits of said city; and said council shall have power to make all needful by-laws, or ordinances and city regulations not repugnant to the constitutional laws of the United States, or the organic act, or the laws of this territory, and shall have power to pass rules and regulations as to the mode and manner of transacting the public business of the city.

SEC. 6. Said council may appoint any justice of the peace residing in said city, as committing magistrate, whose duty it shall be to hear all complaints and violations of said ordinances, to examine all persons arrested by the city marshal, and to punish all violations of said ordinances in the manner pre-

scribed by the council of said city ; no punishment under said ordinances shall exceed fifty dollars fine, or ten days imprisonment, and costs.

SEC. 7. All officers elected or appointed under the provisions of this act shall, before entering upon the duties of their office, take and subscribe an oath of office, and the oath of allegiance prescribed by an act of congress passed July second, A. D. 1862.

SEC. 8. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 30, 1864.

AN ACT

Defining the Boundary Lines of Counties west of the Rocky Mountains.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That all that portion of Idaho territory contained within the following boundaries, to wit: Beginning at the mouth of Clearwater river, and thence up the same to the mouth of the south fork of Clearwater river, thence with the south fork to Lolo creek, thence with Lolo creek in an easterly direction to the summit of the Bitter Root mountains, thence south to the main divide between the waters of Salmon river and the south fork of Clearwater river, thence in a westerly direction along said divide to a point where the summit of said divide is crossed by the road leading from the head of Rocky canon to Salmon river, thence to a point on Snake river known as Pittsburg landing, thence down the center of the channel of Snake river to the place of beginning; be and the same is hereby organized into a county called Nez Perce. That the territory lying north of the Clearwater, and included in the following bounds, be and the same is attached to Nez Perce county for civil and judicial purposes, to wit: Beginning at the confluence of Clearwater and Snake rivers, running a due north course along the eastern boundary of Washington territory, to the forty-ninth parallel, thence east with said parallel to the one hundred and sixteenth meridian of longitude, thence south with said longitudinal line to the sum-

mit of the Couer d' Alene mountains, thence west with said range of mountains until a point is attained from which running a due south line would strike the Clearwater at the mouth of the south fork of said river, thence west with the said Clearwater to its confluence with Snake river, thence with Snake river to the place of beginning.

SEC. 2. All that portion of the territory contained within the following boundaries, to wit: Beginning at the mouth of the south fork of Clearwater, thence up said south fork of Clearwater to the Lolo fork, thence with the Lolo fork in an easterly direction to the summit of the Bitter Root mountains, thence in a northerly direction with said range of mountains until said range turns in a westerly direction and is called Couer d' Alene, thence with said Couer d' Alene range of mountains in a westerly direction until a point is attained from which running a line due south will strike the mouth of the south fork of Clearwater—the place of beginning, be and the same is hereby organized into a county called Shoshone.

SEC. 3. All that portion of territory contained within the following boundaries, to wit: Beginning at a point on Snake river known as Pittsburg landing, thence running up the channel of said river to latitude forty-four thirty; thence in a due east course to the meridian of longitude one hundred and twelve, from thence north along said meridian one hundred and twelve to the summit of the Rocky mountains, thence along said range in a northeasterly direction until the eastern spurs of the Bitter Root mountains are attained, thence with Bitter Root mountains to the southeast corner of Nez Perce county, thence along the southern boundary line of Nez Perce county, to the place of beginning; be and the same is hereby organized into a county called Idaho.

SEC. 4. All that portion of territory lying within the following boundaries, to wit: Beginning at a point on Snake river latitude forty-four and a half, thence in a due eastern direction to longitude one hundred and fourteen and a half, thence in a southwestern direction on the dividing ridge between the waters of Moore's creek and the north fork of Boise river, following said divide to the confluence of Grimes' creek with Boise river, thence in a southerly direction to a point on Snake river opposite the mouth of Goose creek, thence down the center of the channel of Snake river to the place of beginning; be and the same is hereby organized into a county called Boise.

SEC. 5. All that portion of territory lying within the following boundaries, to wit: Beginning at a point on Snake river opposite the mouth of Goose creek, thence with the

center of the channel of Snake up to the one hundred and twelfth meridian of longitude, thence with said meridian to the southeast corner of Idaho county on the summit of the Rocky mountains, thence due west to the northeast corner of Boise county, thence in a southwesterly direction on the dividing ridge between the waters of Moore's creek and the north fork of Boise river, thence following said divide to the confluence of Grimes' creek with Boise river, thence in a southerly direction to the place of beginning; be and the same is hereby organized into a county to be called Alturas, and that the county seat of said county of Alturas is hereby located at the town of Esmeralda.

SEC. 6. All that portion of territory lying within the following boundaries, to wit: Beginning on Snake river at the mouth of the Owyhee and running due south along the eastern boundary line of the state of Oregon to the northern boundary of Nevada territory, thence east with the boundary line of the territory of Nevada and Utah to the one hundred and thirteenth meridian of longitude, thence north with said meridian to Snake river, thence down the channel of Snake in a westerly direction to the mouth of the Owyhee—the place of beginning; be and the same is hereby organized into a county called Owyhee, and the county seat of said county is hereby located at Ruby city.

SEC. 7. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

AN ACT

To incorporate the Northwest Ditch Company.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. That Henry Fhleger, McLean & Stapleton, George Coply, Conrad Kohis, Joseph Clark, Harry Husted and Lewis & Co., and their associates and successors, be and are hereby constituted a body politic under the name and style of the Northwest Ditch Company, with the ordinary

powers and liabilities of corporations, namely: To make, possess and use a corporate seal, to sue and be sued, to plead and be impleaded, to elect officers for the government of the company and the transacting of the usual business, with a capital stock of ten thousand dollars.

SEC. 2. *And be it further enacted*, That the said Northwest Ditch Company be, and are hereby authorized and empowered to take from, and sell to the use of the miners living and operating upon Grasshopper creek, in the territory of Idaho, a sufficient amount of water, not to exceed five hundred inches, said ditch commencing at a point some four miles above the city of Bannack, on said creek, and in said territory, and extending one mile and a quarter below said city.

SEC. 3. *And be it further enacted*, That no person, company or companies, shall be entitled to turn from its natural channel in said stream the water thereof, to the prejudice of the rights of said company under this charter.

SEC. 4. *And be it further enacted*, That the above named company, with all the rights and privileges hereby granted, shall exist and continue for and during the term of ten years, and that during that time the maximum rates of water furnished by said company to purchasers, shall be, for first use, seventy-five cents per inch; second use, fifty cents per inch; and twenty-five cents for third use of water, per inch, per day.

SEC. 5. This act to take effect from and after its passage.

APPROVED, February 4, 1864.

AN ACT

To Incorporate the City of Idaho in Boise County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That the city of Idaho shall be bounded as follows: Commencing at a point in the centre of Moore's creek, where the centre line of Montgomery street in the town of Idaho, would intersect said Moore's creek, thence running up the centre of said Moore's creek to a point where a line running due north and south, one hundred rods east of Montgomery street, would intersect said Moore's creek; thence north, on said north and south line, one mile; thence

west four hundred rods, thence south to the centre of Moore's creek, thence up the centre of said creek to the place of beginning.

SEC. 2. The inhabitants of said city of Idaho shall be, and are hereby constituted a body politic and corporate by the name and style of "the City of Idaho," and by that name, they and their successors shall be known in law, and have perpetual succession, sue and be sued, plead and be impleaded, and shall have power to receive property real and personal, and may dispose of the same for the benefit of the city. All deeds conveying real estate belonging to said city, shall be signed by the mayor and attested by the city clerk, and the seal of said city, and shall be acknowledged and recorded as other deeds. And no conveyance not thus executed, acknowledged, and recorded, shall have any validity whatever as against said city.

SEC. 3. For the government of said city there shall be annually elected in the manner hereinafter provided, the following officers: A mayor, a common council, consisting of seven members, a city marshal, assessor, collector and treasurer. And the mayor and common council shall have power to appoint such other officers as they shall think necessary, and to fix the compensation of all the officers herein provided for, except the mayor and common council who shall receive no compensation. The mayor shall preside at all meetings of the common council, and shall have the right to veto any ordinance passed by the council and the same when so vetoed shall be returned with his reasons to the council, after which the same shall not become a law unless repassed by a two-thirds vote.

SEC. 4. A general election for all city officers required by this act to be elected, shall be held on the first Monday in April in each year. At such election any person shall be entitled to vote, who shall have at the time of said election the qualification of voters at the general county elections provided by law, and who in addition thereto, shall have resided in said city thirty days next preceding said city election. Said election shall be conducted as near as may be in the same manner as the county elections, and returns thereof, shall within five days thereafter be made to the city clerk, who shall open and canvass the same in the presence of the mayor and common council. A vacancy in any city office may be filled by the common council, until the next election. In the absence of the mayor, his duties shall be performed by a member of the council, to be chosen by them for that purpose. The com-

mon council may elect one of their own number to act as city clerk, and fix his compensation.

SEC. 5. Said mayor and common council shall have full power and authority to levy taxes for municipal purposes, not to exceed one half of one per centum per annum, upon all taxable property, in said city, and to collect the same in the manner hereinafter prescribed; to prevent and restrain any disturbance or disorderly conduct, riot, drunkenness or any indecent or immoral practice within the limits of said city; to make such regulations as shall promote the health, peace, cleanliness, and good order within said city; to control and regulate the fire department, and to provide by ordinance for the election of the officers of said department by the members thereof, specifying such officers and defining their duties; to open and establish streets and widen the same when deemed necessary, and for that purpose to condemn property for the city use under such regulations as they may provide for that purpose; but the amount to be paid to the claimant, shall be fixed by three disinterested persons, after due notice to the claimant, and hearing all the evidence to be offered, their report to be afterwards acted upon by the council. The claimant of such property shall be entitled to an appeal from the decision of said council, or of any commissioners or appraisers appointed by them, to the district court, by filing with the city clerk, within ten days after such decision shall be rendered, a bond, with security, in double the value of the property so claimed, to be approved by said clerk, conditioned for the payment of all the costs of said appeal, and to surrender the property to the city if so required by the district court. In any such condemnation of property, the same shall be done in accordance with any general laws, which now are, or hereafter may be in force on the subject. The mayor and common council shall have power to make all needful by-laws, ordinances, and regulations, not repugnant to the constitution or the laws of the United States, nor to the laws of this territory. They shall also have power to prescribe their own rules for doing business. They shall also have power to remove and prevent nuisances; to license, tax, and regulate auctioneers, tavern keepers, pedlars, hawkers, brokers, pawnbrokers, and money changers; to license, tax, and regulate wagons, carts and drays, and to fix the rates to be charged for the wagonage, cartage and drayage of property; to license, tax, regulate and restrain bar-rooms, theatrical and other exhibitions, shows and amusements; to license, tax, restrain, prohibit, and suppress billiard tables, tipling houses, gaming and gambling houses, and houses of ill fame; to erect market houses, estab-

lish market places, and to provide for the government and regulation thereof; to provide for the prosecution and extinguishment of fires, and to organize and establish fire companies; to establish and regulate a police night watch and patrol; to regulate the storage of gun powder, and other combustible materials, and the use of candles, lamps, or other lights, in shops, stables, and other places; and to regulate and prescribe the manner of building partition walls and fences.

SEC. 6. The city assessor shall proceed to assess the taxable property of the city under such regulations as may be prescribed by the council, and shall deliver a certified list of said property so assessed, to the collector. The city collector after receiving such list, shall proceed to collect the same, in the same manner that other taxes are collected, and all the laws and provisions regulating the assessment and collection of taxes under the general revenue laws, shall be followed in the assessment and collection of said city taxes so far as the same may be applicable, and not inconsistent with the ordinances of the city, passed in relation to the same subject matter.

SEC. 7. In case the taxes so assessed upon any property shall not be paid, and no other property of the owner can be found upon which to levy, the city collector shall proceed to make out a list of said delinquent property, and after advertising the same for four successive weeks, in some newspaper published in said city, shall sell at public auction the property so assessed, whether the same be personal property or real estate, or possessing interests in real estate, or of what nature soever it may be. In selling said real estate for taxes the same course shall be pursued as near as may be, which is or may be prescribed by law for the sale of property on execution.

SEC. 8. Should any person feel aggrieved by any assessment made by the city assessor, he may at any time before sale for taxes, apply to the common council to have the same reduced. If said council shall refuse to reduce such assessment, said owner or claimant shall give public notice of such refusal at the tax sale, and such refusal, if unjust, or oppressive, shall then be good cause for invalidating the sale of such property so unjustly assessed. In all cases, a deed shall be executed by the city in the manner hereinafter prescribed, to any purchaser at a tax sale, when the same shall be applied for, and such deed shall be *prima facie* evidence of the regularity and validity of all previous proceeding. Said deed may be invalidated by showing: First. That said property was not subject to taxation; or, Second. That the taxes on the same had been paid; or, Third. That said assessment is unjust or oppressive, and that application to reduce the same had been made to the common

council and refused, and that public notice of such refusal, had been given at the tax sale as hereinbefore required ; but said deed shall not be invalidated for any other reason whatever.

SEC. 9. Said common council shall appoint one of the justices of the peace residing within said city, as committing magistrate, whose duty it shall be to hear all complaints of violation of said ordinances and to examine all persons arrested by the marshal ; said justice shall have power to punish by fine or imprisonment, or both, any violation of any of said ordinances, but no such punishment shall exceed a fine of one hundred dollars, or imprisonment for twenty days in the county or city jail.

SEC. 10. The roads, streets, and alleys within said city limits shall be under the exclusive control of said common council, who shall make all needful rules, in relation to the improvement, repair, grading, cleaning, etc., of the same ; and said city shall not be included in any road district in said county.

SEC. 11. All officers required to be elected by this act, shall, before entering upon the duties of their office, take an oath or affirmation of office, before any person competent to administer oaths. All demands and accounts against the city shall be audited by the city council, and shall be paid by the treasurer on the warrant of the mayor, countersigned by the city clerk. All ordinances shall be signed by the mayor and filed and recorded by the clerk.

SEC. 12. The common council shall have power to improve any street, and levy the cost of said improvement, in whole or in part, upon the property fronting on said street, and draw the balance, if any, from the general fund ; said special assessment to be collected in the same manner as the general city taxes : *Provided*, That all assessments and taxes levied for the improvement of streets and for other local purposes, west of Elk creek, shall be expended on that side of said creek.

SEC. 13. This charter shall be submitted to a vote of the qualified voters residing within said city limits, at the first election of city officers, and shall not be in force unless a majority of all the votes then cast, either for or against the same, be in favor of its adoption.

SEC. 14. This act to take effect and be in force from and after its approval by the governor, unless rejected at said election as provided in the last section.

APPROVED, February 1st, 1864.

AN ACT.

To transfer the actions, suits, proceedings, and business, pending in the District Court of Shoshone, and the District Court of Idaho county, into the District Court for the First Judicial District of the Territory of Idaho.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. That all actions, proceedings, and suits, either civil or criminal, duly brought or commenced in either the district court of Shoshone, or the district court of Idaho county, as the same were constituted by the laws of Washington territory, which were pending and undetermined in either of said courts on the eighteenth day of November, eighteen hundred and sixty-three, and all business pending in said courts, or either of them, at the date aforesaid are hereby transferred to, and vested in the district court for the first judicial district of Idaho territory; *Provided*, That the said district court for the first judicial district of Idaho territory shall possess the same jurisdiction and authority over the said actions, proceedings, suits and business, as heretofore possessed by either of the courts aforesaid, or as could have been exercised by the said district court for the first judicial district of Idaho territory if the same had originally been brought or commenced in the court last named.

SEC. 2. *And be it further enacted*, That all officers or other persons having in their hands any writs, process, or other papers heretofore issued out of the said district court of Shoshone, or the district court of Idaho county, are hereby required to make return thereof, to the district court for the first judicial district of the territory of Idaho, in the same manner as returns in such cases were required to be made to said district courts of Shoshone and Idaho counties; and all persons recognized to appear at a term of said courts, or either thereof, are required in the same manner and places to appear at a term of the said district court for the first judicial district of the territory of Idaho; *Provided, further*, That the clerks, and their deputies, of the district court of Shoshone and the district court of Idaho county, and any person or persons, who may have the custody or control thereof, are hereby required to transmit to the clerk of the district court for the first judicial district of the territory of Idaho, at the earliest practicable moment, and by

the most safe means the files and records, and all other papers, or books, belonging to either of the said courts, last named; *Provided, further,* That all those civil cases which have been commenced in the district court of Shoshone, which cases had their local venue in Nez Perce county, and which cases have been commenced by filing the complaints thereof, in Nez Perce county and now in said county in care of the deputy of the clerk of the district court of Shoshone, are hereby transferred to the district court of the first judicial district, in and for the county of Nez Perce and territory of Idaho; and the said deputy clerk is hereby required to transmit forthwith, all papers now in his possession and belonging to such civil cases, to the clerk of the first judicial district in and for the said county of Nez Perce; and the said district court of the first judicial district in and for the said county of Nez Perce shall have the same jurisdiction over the said cases, as though they had been originally commenced in the same.

SEC. 3. This act shall take effect and be in force from and after its approval by the Governor.

APPROVED, January 6th, 1864.

AN ACT

To Incorporate the City of Bannock on Grasshopper Creek.

ARTICLE I.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That the city of Bannack shall be bounded as follows, to-wit: Commencing at McDonald & Co.'s saw-mill from thence due west to the Bannack ditch, and from thence along said ditch to Nugget hill, in a southern direction, and from thence to Discovery claims on Jimey's bar, and from thence in a direct line to Discovery claim of the Dakota lode, and from thence in a direct line to the northeast corner of the Bannack cemetery and from thence, in a direct line to the place of beginning.

SEC. 2. The inhabitants of said city of Bannack shall be and are hereby constituted a body politic and corporate by

the name and style of Bannack city and by that name they and their successors shall be known in law, and have perpetual succession, sue, and be sued, plead, and be impleaded in all courts whatever: and recover property personal and real within said city, for public buildings, public works and city improvements and may dispose of the same in any way for the benefit of the city, may purchase property beyond the lines of the city to be used for burial purposes and for the establishment of a hospital for the reception of persons infected with contagious diseases.

ARTICLE II.

SECTION 1. For the government of the said city of Bannack, there shall be annually elected, in the manner herein after provided the following officers: a board of aldermen, consisting of five members, one police judge, one marshal, one city attorney, one clerk, one treasurer; all of whom shall be elected by receiving the greatest number of votes as hereafter provided.

ARTICLE III.

SECTION 1. That a general election for all city officers of the corporation required under this act shall be held on the first Monday in April of each year except the first. The first election can be called at any time by notices signed by five persons posted in three conspicuous places, ten days previous to such election.

SEC. 2. No person shall be entitled to vote at any city election who shall not be an elector for territorial officers, and who shall not have resided in the city ten days next preceding the day of election, and no person shall be eligible to any office under this charter who is not a qualified voter of said city.

SEC. 3. At all elections for city officers the vote shall be by ballot at the time and place designated by the board of aldermen.

SEC. 4. That all vacancies happening before the annual election, shall be filled by the board of aldermen.

SEC. 5. That all elections for city officers shall continue from eleven A. M., until six P. M.

SEC. 6. The person who shall receive a plurality of votes for any office shall be declared duly elected and the clerk shall issue to him a certificate of election and on the presentation

of the same to the board of aldermen, he shall be sworn into office.

ARTICLE IV.

SECTION 1. The members of the board of aldermen shall annually elect one of their number president of the board of aldermen, who shall hold his office for one year, or until his successor shall be elected and qualified.

SEC. 2. The members of the board of aldermen shall fix the time and place for holding their stated meetings, and may be convened by the president of the board at any time; a majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 3. Any ordinance which shall have been passed by the board of alderman shall, before it becomes a law, be signed by the president of the board.

SEC. 4. Said board of alderman shall have full power and authority to make all needful laws, ordinances and town regulations they deem proper, if not repugnant to the constitution or the laws of the United States, or this territory.

SEC. 5. Said board of aldermen shall endeavor to make such regulations as shall promote and secure the health, peace, cleanliness, safety, and good order within said town.

SEC. 6. The roads, streets and alleys, within said city limits shall be under the exclusive control of said Board of aldermen, who shall make all needful rules and repairs they deem proper.

ARTICLE V.

SECTION 1. The alderman shall receive no compensation.

SEC. 2. The marshal, clerk and treasurer shall receive such compensation as the board of alderman may direct.

SEC. 3. The marshal shall have the same power in all civil actions as any constable, and may by consent of the board of alderman, appoint necessary deputies to act in the same capacity or relieve the same in like manner.

SEC. 4. The board of alderman shall define the duties of all officers by ordinance, which are not herein provided.

ARTICLE VI.

SECTION 1. All who are elected or appointed under this act shall before entering upon their duties take a proper oath of office.

ARTICLE VII.

SECTION 1. This charter may go into effect on and after such day as a majority of the qualified electors residing within the limits of said Bannack city, at a general election to be held after twenty days notice, to be given by six written notices, posted in the most public places within said limits, and signed by at least twelve of said electors, shall vote to accept the same.

APPROVED February 4, 1864.

AN ACT

To Incorporate the City of Placerville, Boise County.

ARTICLE I.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The city of Placerville shall be bounded as follows: Commencing at a point half a mile north of the centre of plaza, (which plaza is located in the centre of the most business portion of said city, the centre of which is represented by a well), running thence west half a mile, thence south one mile, thence east one mile, thence north one mile, thence west half a mile, to the place of beginning.

SEC. 2. The inhabitants of the said city of Placerville shall be, and they are hereby constituted a body politic and corporate, by the name of the city of "Placerville," and by that name they and their successors shall be known in law, and have perpetual succession, sue and be sued, plead and be impleaded, in all the courts of law whatsoever, and receive property personal and real, within said city for public buildings, public works and city improvements, and may dispose of the same for the benefit of the city, may purchase property beyond the limits of the city to be used for burial purposes, and for the establishment of a hospital for the reception of persons afflicted with contagious or other diseases; also, for water works to supply the city with water, and may dispose of the same for the benefit of said city, and shall have a seal which they may alter at pleasure.

ARTICLE II.

SECTION 1. For the government of the city there shall be elected in the manner hereinafter provided, the following officers: A common council, (consisting of five members), a mayor, a recorder, a treasurer, a marshal, and an assessor, who shall hold their offices for one year, and until their successors shall be duly elected and qualified; and there shall be appointed annually by the city council, a city attorney, a street commissioner, a city surveyor and a city collector.

ARTICLE III.

SECTION 1. That a general election for all city officers of the corporation required to be elected under this act, shall be held on the first Monday of April in each year.

SEC. 2. No person shall be entitled to vote at any city election, who shall not be an elector for territorial officers, and have resided in the city fifteen days next preceding the day of election, and no person shall be eligible to any office under this charter, who is not a qualified voter of said city.

SEC. 3. At all elections for city officers, the vote shall be by ballot, at the time and place designated by the city council.

SEC. 4. That all vacancies happening before the annual election, shall be filled by the city council.

SEC. 5. That all elections for city officers shall continue one day, during which time the polls shall be open from ten o'clock, A. M., to four o'clock, P. M.

SEC. 6. The persons who shall have received a plurality of votes for any office, shall be declared duly elected, and the clerk shall issue to him a certificate of election; upon presentation of the same by him to the council, he shall be sworn into office.

ARTICLE IV.

SECTION 1. The members of the common council shall fix the time and place of holding their stated meetings and may be convened by the mayor at any time; a majority of the members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 2. Any ordinance which shall have been passed by the common council, shall, before it becomes a law, be presented to the mayor for his approval; if he approves he shall sign it; if not, he shall within ten days, return it with his

objections in writing, to the common council, who shall cause the same to be entered in the journal, and shall proceed to recommend the same. If, after such recommendation, two-thirds of the members of the common council shall agree to pass the same, it shall become a law.

SEC. 3. The mayor and common council shall have power within the city: First. To make by-laws and ordinances not repugnant to the laws of the United States, or to the laws of this territory, necessary to carry into effect the provisions of this act. Second. To levy taxes not to exceed one per cent. per annum upon all real and personal property made taxable by law for territorial and county purposes. Third. To make regulations to prevent the introduction of contagious diseases into the city, and for securing health, peace, cleanliness and good order of the city. Fourth. To make such regulations as may be necessary to protect the city against fire. Fifth. To appoint and employ such a police force as they may deem necessary for the protection, peace and safety of the city. Sixth. To prevent and restrain any disturbance, or disorderly conduct, or any indecent and immoral practices, within the limits of said city.

ARTICLE V.

SECTION 1. The mayor and members of the common council shall receive no pay for their services, until the city shall contain five thousand inhabitants, and then such pay to be determined by a vote of the city.

SEC. 2. The recorder shall receive the same fees for his services as justices of the peace are entitled to by law for services of a similar nature.

SEC. 3. The marshal shall receive the same fees for his services, as constables are entitled to by law for services of a similar nature, and for other services such compensation as may be provided by ordinance.

SEC. 4. All other officers provided for by this act, or to be created, shall receive such compensation as may be established by ordinance.

ARTICLE VI.—OF THE DUTIES OF CITY OFFICERS.

SECTION 1. It shall be the duty of the mayor to communicate to the common council at least once in each year, the condition of the city, its finances and improvements.

SEC. 2. All and each of the officers elected, or provided for

by the provisions of this act, shall reside within the limits of the city.

SEC. 3. It shall be the duty of the city marshal, in addition to the duties by the common council, to execute and return all processes issued by the recorder.

SEC. 4. It shall be the duty of the assessor, in addition to the duties prescribed by the common council, to make out within such time as the common council shall order, a correct list of all the property taxable by law within said city. It shall also be the duty of the assessor to collect all moneys and taxes levied by authority of the city, and pay the same over to the city treasurer monthly.

SEC. 5. It shall be the duty of the city treasurer to receive all moneys that shall come into his hands by taxation or otherwise, and pay out the same in such manner as shall be prescribed by the common council.

SEC. 6. It shall be the duty of the city attorney to attend to all suits, matters and things in which the city may be legally interested, give his advice and opinion in writing upon each when required by the mayor or common council, and attend to all prosecutions against offenders of the city ordinances.

SEC. 7. The common council shall define the duties of all officers by ordinance, which are not herein prescribed.

ARTICLE VII.

SECTION 1. All officers required to be elected under this act shall, before entering upon the duties of their office, take an oath or affirmation (as prescribed by law for county officers) before any person competent to administer oaths.

SEC. 2. All resolutions and ordinances calling for the appropriation of any sums of money exceeding one hundred (100) dollars shall lie over at least one meeting.

SEC. 3. The first election shall be held at the office of Thomas H. Stringham, which shall be called by printed notices in not less than three public places in the village of Placerville, signed by not less than five electors of said city; the judges of said election shall be nominated and elected by the electors assembled at the place of holding the election on the morning of said election day, together with two clerks, which judges and clerks shall be qualified in the same manner as judges and clerks of county elections.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

AN ACT .

Incorporating the Bannack Ditch and Mining Company, and granting a charter to the same, to locate and construct a Ditch with branches.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. George Coply, E. P. Lewis, N. J. Davis, George Wing, A. J. Smith, A. F. Graeter, W. C. Rheem, N. J. Brannard, their associates and successors, are hereby made and constituted a body politic under the name and style of the Bannack Ditch and Mining Company, with the ordinary powers and liabilities of corporations, with a capital stock of twenty thousand dollars, which may be increased to one hundred thousand dollars.

SEC. 2. The above named corporators shall have the exclusive authority to survey, lay out, construct and maintain a ditch, with necessary branches, for inlet and outlet, to and in the mines, in and about Grasshopper creek, in the territory of Idaho, of sufficient length and size to supply with water the mines opened or to be opened on said Grasshopper creek, below said ditch and its branches, and between the points at which water shall be received into said ditch, and a point down said creek six miles below Bannack city.

SEC. 3. The maximum rates at which said company may sell and furnish water from their said ditch to purchasers, shall be as follows, viz: One dollar per inch for the first head, seventy-five cents per inch for the second head, fifty cents per inch for the third head, and twenty-five cents per inch for the fourth head, measured according to the custom of miners, under six-inch pressure.

SEC. 4. The said corporators, for the purpose of filling and keeping full their said ditch, shall have the exclusive right to the water of and in said Grasshopper creek (saving and excepting all prior and vested rights in and to the same), and of and in the branches of said creek, which flow into it from a southerly and southwesterly direction, and of and in the nearest branch of Horse Prairie creek, being the north fork of the same, and no other person or company shall take or use the waters in the streams above mentioned, above or at the points of supply of said ditch, in such manner or quantity as will in any way conflict with the right of said corporators, to first fill and keep full their said ditch with water from said streams.

Sec. 5. The rights and privileges in this act granted, shall be and continue for the term of ten years from and after the passage of this act, and this act shall take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

AN ACT

Granting to Hugh O'Neil, S. M. Hall and G. F. Simpson, the right to have and maintain a Ferry across the Snake or Lewis river, eight miles below the first junction of the road from East Bannack, to the Overland route.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. The exclusive right to maintain and operate a ferry across the waters of the Snake or Lewis river, at a certain point where the road from Bannack city and Stinking Water mines first strikes the Snake or Lewis river, and for one mile above and three miles below the said point, with the privilege of constructing a bridge instead, is hereby granted to Hugh O'Neil, S. M. Hall and G. F. Simpson, their associates and successors, for the term of ten years, with the privileges, and subject to the conditions prescribed by this act.

Sec. 2. So long, not to exceed ten years, as the said O'Neil, Hall, and Simpson, their associates and successors shall maintain, operate and carry on a good, safe and sufficient ferry, or maintain a good, safe, and sufficient bridge, between the points named, they shall be authorized to collect the following rates of toll, viz: For each wagon carrying two thousand pounds and under, four dollars; for each additional one thousand pounds, one dollar; and for each animal of any kind, ridden or driven loose, fifty cents.

Sec. 3. Said O'Neil, Hall and Simpson, their associates and successors, shall be held and obligated, from the first day of May of each year, until the river shall be so low that it can be forded with ease and safety, to keep said ferry or bridge in good, safe and sufficient order and condition for use by night and day, and so long as no bridge shall be constructed, they shall keep a competent ferryman, who shall transport travelers,

wagons and stock across said river promptly, by night and day, under penalty of all damages sustained and the forfeiture of this charter.

SEC. 4. No section or part of this act shall be so construed as to prohibit the county commissioners from exercising the same authority over said ferry or bridge as they are authorized to exercise over other licensed ferries or bridges, and they may on a petition signed by twenty *bona fide* citizens of the county in which said ferry or bridge is located, alter and fix the rates of toll at the expiration of two years after the passage of this act: *Provided*, That the said Hall & Co., and their associates do not interfere with the prior rights of any person or persons who have established a ferry on the said river at the places herein mentioned.

SEC. 5. This act shall take effect from and after its approval by the governor.

APPROVED, January, 28th, 1864.

AN ACT

To authorize H. D. Van Wyck, his heirs and assigns, to manufacture and sell Illuminating Gas in the towns of Bannock City and Buena Vista City, in Boise county.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That H. D. Van Wyck, his heirs and assigns, be and are hereby authorized during the period of ten years next ensuing the approval of this act, to have and possess the exclusive privilege of supplying the towns of Bannock city and Buena Vista city, in the county of Boise, territory of Idaho, and the inhabitants and residents of said places, with illuminating gas.

SEC. 2. The said H. D. Van Wyck, his heirs and assigns, shall have authority to erect within the town limits of said Bannock city and Buena Vista city, the necessary buildings, works, and machinery, for the manufacture and production of illuminating gas, to make the necessary excavation in the public streets of said towns for the purpose of laying gas pipes therein, and to reopen the said excavations for the purpose of replacing and repairing the said gas pipes: *Provided*,

That the streets of said towns shall not be obstructed to an unnecessary degree, or for an unreasonable period of time, while said pipes are being laid.

SEC. 3. The said H. D. Van Wyck, his heirs and assigns, shall within the period of ten months from and after the approval of this act, commence the construction of the works necessary for the manufacture or production of illuminating gas, and shall within the period of two years from and after the approval of this act, complete the same.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 6th, 1864.

AN ACT

To incorporate the South Boise Wagon Road Company.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Daniel McLaughlin, Robt. A. Sidebottom and Julius Newberg be, and they are hereby constituted a body corporate under the name and style of the South Boise wagon road company.

SEC. 2. Said corporation shall have power in its corporate name to sue and be sued, to contract and be contracted with, buy and sell real and personal property, and have all the other necessary powers of a corporation.

SEC. 3. Said corporation is hereby invested with the necessary powers to construct and build a wagon road from the Idaho quartz lode, in Boise county, by the most practicable route, heretofore located by said Robert A. Sidebottom, to a point on Little Camas Prairie, in said county, where a small stream crosses the Emigrant road from Fort Boise to Fort Hall.

SEC. 4. Said corporation shall have the exclusive right to construct a wagon road on the route designated and within one mile of either side of the present line of said road, for the period of ten years, and shall be required annually to pay into the county school fund the sum of fifty dollars, on or before the first day of January in each year.

SEC. 5. It shall be the duty of said corporation to bridge

all the streams on said route so that the same may be passable on or before the first of July, one thousand eight hundred and sixty-four, and keep the road in good repair after that date.

SEC. 6. Said corporation shall be allowed and entitled to charge the following rates of toll on said road :

For each team of two horses, mules, or oxen and wagon...	\$ 4 00
“ “ additional team,.....	1 00
“ “ horse and rider,.....	1 00
“ “ pack animal,.....	1 00
“ “ loose animal,.....	75
“ “ sheep, per head,.....	15

SEC. 7. The said road shall be completed within the term of two years from the passage of this act, so that there shall be a safe and easy passage for loaded wagons over the same, under forfeiture of the powers and privileges hereby granted ; and after four years from the passage of this act the county commissioners of Boise county may alter and amend the toll rates specified in section six of this act, upon the petition of at least twenty-five *bona fide* inhabitants of said county.

SEC. 8. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

Authorizing N. C. Boatman his associates and assigns, to manufacture and sell Illuminating Gas, to the citizens of Placerville and its intermediate neighborhood in Boise County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That N. C. Boatman his associates and assigns be, and are hereby authorized to manufacture illuminating gas, for sale to the inhabitants of Placerville and its immediate neighborhood in Boise county, for a period of ten years from the passage of this act, excluding others, on condition that the said N. C. Boatman his associates and assigns comply with the provisions of this grant.

Sec. 2. That the said N. C. Boatman, his associates and assigns, shall have the right to dig ditches, make excavations, lay pipes, erect posts, or do any other work necessary in carrying out the objects of this grant, in any street, alley or public square in said town of Placerville; *Provided*, That in digging ditches or making excavations, laying pipes, or erecting posts, the travel shall not be incommoded for a longer period of time than may be necessary in doing the work required.

Sec. 3. The said N. C. Boatman, his associates and assigns shall, within two months from the passage of this act, commence the necessary work to carry out the spirit of this law, by erecting necessary buildings or making excavations and shall within two years have completed the same.

Sec. 4. That any person or persons who shall injure by breaking, pulling down, or in any manner interfering with the pipes, posts, dykes, ditches or buildings necessary in carrying out the objects of this law, shall be considered guilty of a misdemeanor, and on conviction may be fined in a sum not to exceed five hundred dollars, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment, and shall be subject to suit in a civil action for damages.

Sec. 5. This act shall take effect and be in force from and after its approval by the governor.

APPROVED January 30, 1864.

AN ACT

Authorizing Charles F. Cone and associates, to establish and maintain a Toll Road in Idaho County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Charles F. Cone and associates, their heirs, successors or assigns, are hereby granted the exclusive right and privilege to establish and maintain a toll road, commencing at the point known as the Frenchman's, near the head of Comas prairie in Idaho county, and running thence by way of White Bird creek, up Salmon river, by the most practicable route to intersect John Howerton's road, at the mouth of Little Salmon river.

SEC. 2. The said parties shall have the right to charge and collect toll on said road as follows :

For each wagon and single team.....	\$4 00
“ “ additional team.....	1 00
“ “ saddle horse or mule.....	1 00
“ “ horse or mule packed.....	1 00
“ “ loose horse or mule.....	50
“ “ loose cattle, each.....	15
“ “ sheep and swine, each.....	12
“ “ empty wagon, half price.	

SEC. 3. The said parties may establish toll gates at one or more places on said road, and collect toll thereat; *Provided*, The aggregate toll so collected shall not exceed the rates specified in section two of this act; and, *Provided, further*, That no toll gate be established within one mile of any city, or village on said road unless the same be at a ferry or bridge thereon.

SEC. 4. Said company, their heirs, successors or assigns, shall have and enjoy all the rights and immunities thereto appertaining and the exclusive right of way across and through the land and territory lying between said points, which right of way is hereby granted to the said parties for the term of ten years; *Provided*, That within four months from the passage of this act, they commence the construction of said road, and within one year thereafter, shall complete the entire road so as to be passable for wagons; otherwise the right to construct shall be forfeited and become null and void. Said parties shall, after its completion, at all times keep the same in good repair and condition, and shall establish and at all times maintain bridges and ferries at all necessary points on the line of said road, for the crossing of which no additional toll shall be collected.

SEC. 5. At each toll gate on said road, there shall be kept in a conspicuous place, a bulletin board with the notes of toll herein prescribed, intelligibly painted thereon; *Provided*, That nothing contained in this act shall be so construed as to prevent the county commissioners of the county in which said road is located, from altering and fixing the rates of toll over said road and ferry, upon the application of thirty *bona fide* citizens of the said county, after the expiration of three years from the passage of this act.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 16th, 1864.

AN ACT

Authorizing A. G. Turner, Benj. F. Green, D. W. Cummings and R. W. Button to establish and maintain a Toll Road from Boise City to Owyhee Mines and build all necessary Ferries on the line of said road.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That A. G. Turner, Benj. F. Green, D. W. Cummings and R. W. Button be and they are hereby authorized to construct a wagon road over the most accessible route from a town known as Boise city, in Boise county, Idaho territory, to Ruby city, Owyhee county and territory as aforesaid, and to construct ferries over intervening water courses between said points; and to have exclusive privilege for two miles above, and two miles below the points so selected for ferries, for the period of ten years.

SEC. 2. The said A. G. Turner, Benj. F. Green, D. W. Cummings and R. W. Button, shall within ten months from and after the passage of this act, cause said route to be opened for the accommodation of the traveling public with the necessary ferries to make travel convenient, safe, and expeditious between said points of beginning and termination, otherwise this charter is null and void.

SEC. 3. It shall be lawful for said A. G. Turner, Benj. F. Green, D. W. Cummings and R. W. Button, to collect the following tolls including travel over said route and ferriage fees.

FOR FERRIAGE OVER BOISE RIVER.

For each footman, (twenty-five cents).....	\$	25
“ “ horse and rider, (seventy-five cents).....		75
“ “ pack animal, (seventy-five cents).....		75
“ “ loose animals, other than sheep or hogs, per head, (ten cents).....		10
“ “ wagon with two horses, mules or oxen (one twenty-five one hundreths dollars).....		1 25
“ “ four horses, mules, or oxen, (two dollars).....		2 00
“ “ six horses, mules, or oxen, (three dollars).....		3 00

FERRIAGE OVER SNAKE RIVER.

For footman, (fifty cents).....	\$ 50
“ horse and rider, (one dollar).....	1 00
“ pack animals, (one dollar).....	1 00
“ loose animals, other than sheep or hogs, (fifty cents) each.....	50
“ sheep or hogs each, (fifteen cents).....	15
“ wagon with two horses, mules, or oxen (two dollars).....	2 00
“ wagon with four horses, mules or oxen, (three dollars).....	3 00
“ wagon six horses, mules or oxen, (four dollars)....	4 00

It shall be lawful at any time after the expiration of one year from the passage of this act for the county commissioners of the several counties through which said road passes, to alter or change the rates of toll herein provided; and *Provided, further,* That this charter shall not interfere with any rights of any person or persons, heretofore established.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 29th, 1864.

AN ACT

Granting to Jacob Meeks and John P. Gibson, the exclusive right to maintain a ferry across the Snake or Lewis river, at any place below the mouth of Blackfoot river within five miles of the same.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. That the exclusive right to maintain and operate a ferry across the waters of Lewis or Snake river, at any and every point within two miles below the mouth of Blackfoot river, is hereby granted to Jacob Meeks and John P. Gibson and their associates and successors, for the term of ten years, with the privilege and subject to the conditions prescribed by this act.

SEC. 2. So long, not exceeding ten years, as the said Jacob

Meeks and John P. Gibson, their associates and successors shall maintain and operate a good, safe and sufficient ferry boat, to be run in the proper season, by a rope stretched across said river of sufficient size, and blocks upon the same of strength sufficient to sustain, in all ordinary stages of water, the pressure of the current of the said stream or river, they shall be authorized to collect the following rates of toll, viz: For each wagon carrying two thousand pounds or under, four dollars, for each additional one thousand pounds one dollar, for mules or cattle seventy-five cents for each head.

SEC. 3. The said Jacob Meeks and John P. Gibson shall be bound to have the said boat in readiness to cross wagons over said Snake or Lewis river, at the said location, as above specified, on or before the fifteenth day of April of each year, and to maintain the same in readiness to cross wagons and cattle over the same, until the water in said stream shall be so low that it can be forded with safety, after which, they shall not be bound to have the same in readiness until the fifteenth day of April of the ensuing year.

SEC. 4. The said Jacob Meeks and John P. Gibson shall be held and obligated, within the time specified in the preceding section, to keep a good and competent ferryman or ferrymen, as shall be needed, who shall transport wagons and stock across said river, promptly both by night and day, whenever it is safe to cross said river in the night, under penalty of damages sustained by their neglect, or refusal, and the forfeiture of this charter.

SEC. 5. The county commissioners shall have power to decrease the foregoing ferry rates, after two years, upon the petition of twenty-five *bona fide* citizens, but nothing herein contained shall be so construed as to prevent the Legislature from altering or amending the foregoing ferry rates after the passage of this act, but the said Jacob Meeks and his associates shall not infringe upon prior rights of any person or persons who may have established a ferry upon said river at the place herein mentioned.

SEC. 6. This act shall take effect and be in force from and after its approval by the governor.

APPROVED. January 28th, 1864.

AN ACT

To Incorporate the Wright Ditch Company.

*Be it enacted by the Legislative Assembly of the Territory of Idaho,
as follows:*

SECTION 1. That William Wright, Thomas Wright, and John Wright, their associates or assigns, are hereby declared a body corporate, under the name of the Wright Ditch Company, for ten years from the passage of this act.

SEC. 2. Said company shall have the power to take seven hundred inches, miner's measurement, of the waters of Moore's creek, at a point on said creek about six miles above Bannock city, Boise county, and build a ditch, flumes, and other necessary conductors, of sufficient capacity to carry said water from said point along the said Moore's creek, and the hills adjacent thereto, thence along the hills up Elk creek to, and across Gold Hill, and thence to such other point in the third mining district in said Boise county, as said water can be led and used to advantage.

SEC. 3. Said company is hereby granted the right of way for said ditch, flumes, and other necessary conductors, together with a sufficient space on either side of said ditch, flumes, or conductors, to protect the same along the line of said ditch, from said point on Moore's creek to, and across said Gold Hill, said company may also build and maintain such reservoirs, as may be necessary for said ditch.

SEC. 4. Said company may at any time within two years, enlarge said ditch to the capacity of twelve hundred inches, and may turn that amount of water in said ditch when so enlarged; and said company shall have the right to run any tributary of said Moore's or Elk creek into said ditch along the line thereof.

SEC. 5. Said company may sue or be sued in their corporate name, and shall have power to purchase and hold water rights or other ditches emptying into their ditch, and such other real and personal property as may be necessary for the use of said company.

SEC. 6. The capital stock of said company shall not exceed fifty thousand dollars.

SEC. 7. No part of this act shall be so construed, as to in any manner interfere with ditch and mining rights heretofore established.

SEC. 8. This act shall take effect and be in force from and after its approval by the governor.

APPROVED February 1, 1864.

AN ACT

To incorporate the Bannock City Water Company.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That John C. Henly, Charles D. Vajin, and George Woodman, and their assigns, are hereby declared a body corporate, under the name of Bannock City water company.

SEC. 2. Said company shall have the exclusive right to take twelve inches of water to be measured according to the custom of miners, out of Moore's creek, or Elk creek, or both, or out of any tributary of either, or both of said creeks, at any suitable point, and convey said water in any suitable troughs or pipes, or bored logs, to Bannock city and Buena Vista bar, in the county of Boise; and the said company shall have the exclusive right to run their troughs, pipes, or bored logs, through each and every one of the streets, alleys, roads, or highways of said Bannock city and Buena Vista bar, for the purpose of conveying water through said places, for distribution for all ordinary household purposes, such as drinking, cooking, and the like; and shall have the right to distribute said water for household purposes for the term of ten years from the passage of this act.

SEC. 3. Said company shall have power to purchase lands, buildings and other real property, and all personal property necessary for the use of said company to build reservoirs and maintain the same, together with such pipes, troughs, or bored logs as may be used, to put pipes in, and faucets in houses when requested, and to remove the same at pleasure; to sue and to be sued; to make all necessary by-laws and regulations not inconsistent with the constitution of the United States, or the organic act of this territory; and to charge and collect toll for the use of said water.

SEC. 4. Said company is hereby granted the exclusive

right of way for the conveyance of said water from said Moore's creek, or Elk creek, or tributaries, to said Bannock city and Buena Vista bar, and through the various streets, alleys, roads and highways in said places.

SEC. 5. Said company shall have a secretary, president, and treasurer, and such other officers as the by-laws of said company may direct.

SEC. 6. Said company shall commence the work of bringing in said water within one year, and shall complete the same, so far as shall then be practicable, within three years from the passage of this act.

SEC. 7. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 13, 1864.

AN ACT

Authorizing John Howerton and associates to establish and maintain a Toll Road from the mouth of Little Salmon river in Idaho County to Placerville, in Boise County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That John Howerton and associates, their heirs successors, or assigns, are hereby granted the exclusive right and privilege to establish and maintain a toll-road, commencing at the mouth of Little Salmon river, running up the same on the south side thereof, to Packer John's bridge, thence across the river, and over the most practicable route to Goose creek at Lorenzo's; thence across the mountains and over the most practicable route to a point where the present trail crosses the north fork of Payette river; thence over the present trail to Placerville.

SEC. 2. The said parties shall have the right to charge and collect toll, on said road as follows:

For each wagon and single team.....	\$4 00
“ “ additional team.....	1 00
“ “ horse or mule, packed.....	1 00
“ “ loose horse or mule.....	50
“ “ loose cattle, each.....	12
“ “ sheep and swine, each.....	12
“ empty wagon, half price.	

SEC. 3. The said parties may establish toll gates at one or more places on said road, and collect tolls thereat: *Provided*, The aggregate toll so collected shall not exceed the rates specified in section two of this act.

SEC. 4. Said company, their heirs, successors or assigns, shall have and employ all the rights and immunities thereunto appertaining, and the exclusive right of way for one mile each side of said road across and through the land and territory lying between said points; which right of way is hereby granted to the said parties for the term of ten years: *Provided*, That within four months from the passage of this act, they commence the construction of said road, and within six months thereafter shall complete so much of the same as is required for the passage of pack animals over the whole length of the road; and *Provided further*, That within one year from the said commencement they shall complete the entire road so that it will be passable for wagons; otherwise, the right to construct shall be forfeited and become null and void. Said parties shall after its completion, at all times, keep the same in passable order and condition, and shall establish, and at all times maintain, bridges and ferries at all necessary points on the line of said road, for the crossing of which no additional toll shall be collected.

SEC. 5. At each toll gate on said road there shall be kept in a conspicuous place a bulletin board, with the rates of toll herein prescribed, intelligibly painted thereon.

SEC. 6. No toll gate shall be established within one mile of any city or village on said road, unless the same be at a ferry or bridge on said road: *Provided*, Said John Howerton and associates shall, previous to charging toll on said road, provide safe bridges or ferries to transport the persons and property of all travelers who may pass over said road; also, sufficient boats (if ferries, with hands to work said boats, or ferries) for the safe transportation of said persons and property over any and all streams not fordable on the line of said road: *Provided*, At the expiration of four years, upon the application of twenty *bona fide* citizens of the county in which said road is located, the county commissioners shall have power to alter and fix the rates of toll over said road.

Sec. 7. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 16, 1864.

AN ACT

To authorize J. S. Wilson and others to establish and maintain a Ferry at the town of Gallatin, on the Missouri river.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That J. S. Wilson, E. T. Lewis, and Henry Thompson, their associates, heirs, and assigns, be and they are authorized to construct and maintain a ferry, and collect toll thereon on the Missouri river, at or near the town of Gallatin. The said J. S. Wilson, his associates aforesaid, their heirs and assigns, shall have the exclusive privilege of ferrying upon the Missouri river for two miles each way, from a point opposite the town of Gallatin, and the commissioners of the county in which the said ferry is located, may regulate the rate of toll to be collected by said J. S. Wilson, E. T. Lewis, and Henry Thompson.

Sec. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED February 4, 1864.

AN ACT

To establish a Wagon Road from Fort Owen to the Bannock City and Deer Lodge road.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That E. B. Johnson, John Lambert, and W. F.

Sanders, and their associates and successors, be and are hereby constituted a body politic under the name and style of the Johnson Wagon Road Company, with the ordinary powers and liabilities of corporations, and may use a company seal, to sue and be sued, to plead and be impleaded.

SEC. 2. *And be it further enacted*, That said company may make and establish a wagon road, as follows: From Fort Owens up the Bitter Root river and across the summit of the Rocky mountains to Big Hole river, and from thence to or near the mouth of Big Hole river, and from thence to the Bannock city and Deer Lodge road.

SEC. 3. *And be it further enacted*, That said company shall make said road over the nearest and most practicable route as above described, and have the exclusive right for one mile on each side of said road.

SEC. 4. And that it shall be lawful for this company or their heirs or assigns, to collect the following rates of toll: Each wagon and two animals, three dollars; and each additional pair of animals, fifty cents; for horse and rider, fifty cents; for each pack animal, fifty cents; for loose animals, fifteen cents; sheep or hogs, ten cents per head.

SEC. 5. And that said company shall make or cause to be made, said road within ten months from the passage of this act, and if not, this charter shall be null and void.

SEC. 6. *And be it further enacted*, That the above named company shall have all the rights and privileges hereby guaranteed; shall exist and continue for and during the term of twenty years: *Provided*, That no part of this act shall be so construed as to prevent the county commissioners from fixing the rates of toll on said road, upon the petition of thirty *bona fide* citizens of the county in which said road is located, after the expiration of four years from the passage of this act.

SEC. 7. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 22d, 1864.

AN ACT

To authorize Hill Beachey, his heirs and assigns to construct and maintain a Toll Road from Lewiston to the intersection of what is known as the Mullen road.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Hill Beachey, his heirs and assigns, are hereby authorized to construct and maintain a wagon toll road, from the north side of Clearwater river, opposite the town of Lewiston, in Nez Perce county, over and along the most direct and practicable route, to be hereafter selected by said Beachey, his heirs and assigns, to intersect what is known as Mullen's military road, leading from Walla Walla to Fort Benton, said authority to continue for the period of ten years from the date of this act, and the said Beachey, his heirs and assigns, are hereby granted the exclusive right of way over and along said route so selected and for a distance of one mile on either side of said route for the period herein named.

SEC. 2. That within five months from the date of the passage of this act, the said Beachey, his heirs and assigns, shall commence the work of the construction of said road, and within six months thereafter they shall complete the same, otherwise this franchise shall become void.

SEC. 3. The said Beachey, his heirs and assigns, where required shall build substantial bridges and culverts over and along said route, and when needed, to grade said road, and keep it in good repair and condition at all times, as to render transportation in wagons of persons and property both safe and speedy.

SEC. 4. That whenever said Beachey, his heirs and assigns, shall have completed the construction of said road, as aforesaid, they shall be authorized to erect one or more toll gates on said road and charge and collect toll thereat; *Provided*, That the aggregate toll, for the whole line of said road, does not exceed the following rates, to-wit:

For each wagon or vehicle drawn by one horse, mule,	
or ox.....	\$ 2 00
“ “ wagon or vehicle drawn by one span of	
horses, mules or one yoke of oxen.....	4 00
“ “ additional horse, mule, or ox.....	50

SEC. 5. The county commissioners of Nez Perce county, after the expiration of three years, from the date of the com-

pletion of said road, shall have authority to alter or modify the above rate of toll as in their judgment the public interest may require.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

Authorizing James R. Wiley and Nathan Cornish to establish and maintain a Toll Road in Boise county.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. James R. Wiley, and Nathan Cornish their heirs, successors, and assigns are hereby granted the right and privilege to establish and maintain a toll road from the village of Placerville, in Boise Basin, in Boise county, Idaho territory, to Bannock City in said territory. Said road is to commence at the village of Placerville, running thence in an easterly direction to the village of Centerville in said basin, and thence in an easterly direction, to Bannock City, over the route heretofore established by said parties and now occupied and used by them as a toll road.

SEC. 2. The said parties shall have the right to charge and collect toll on said road not exceeding the following rates: Loaded wagons, and one span of horses, mules, or

yoke of oxen.....	\$ 2 00
Each additional animal.....	50
Empty teams returning, shall be charged only half price.	
Buggy and two horses.....	1 50
“ “ one horse.....	1 00

SEC. 3. The said parties may also establish toll gates at one or more points on said road and collect tolls thereat, provided the aggregate tolls so collected shall not exceed the rates as designated in section two of this act; and *Provided further*, That not more than one-third of the above rates designated in section two, shall be charged for traveling only between Centerville and Placerville, and two-thirds of said rates for traveling only between Centerville and Bannock City. And said

company are required to keep said road in good repair and condition, except in times of very deep snow, and in such case toll shall not be charged during the time said road is not kept open in a passable condition for teams.

SEC. 4. Said parties and their successors or assigns shall have and enjoy all the rights and immunities thereto appertaining, and shall have the exclusive right of way across and through the lands and territory, lying between the said point of beginning at Placerville, running to Centerville and thence to Bannock, the place of termination, on the line of said road before described for one mile each side of said road, which right, is hereby granted and ceded to the parties for the term of six years from the passage of this act; *Provided*, That within four months the said parties shall complete the construction of said road, otherwise the right to construct the same shall be forfeited and become null and void.

SEC. 5. After two years from the construction of said road the county of Boise may have the right to purchase said road at an appraised value to be determined by five appraisers, two to be selected by the said parties owning said toll road, two by the county commissioners, and one to be selected by the four appraisers hereinbefore provided for, and such valuation shall be estimated to be the value of the road; *Provided, further*, That nothing herein contained shall be so construed as to interfere with the right to build a road or roads from the points mentioned in this act to other points not mentioned. It shall be lawful for the county commissioners of Boise county at any time after the passage of this act, to alter and fix the rates of toll over said road.

SEC. 6. Said parties shall keep at each toll gate a bulletin board on which shall be intelligibly painted each rate of toll as prescribed by this act; *Provided, also*, That no toll gate shall be established within one mile of either of the points mentioned on said road.

SEC. 7. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 29th, 1864.

AN ACT

To establish and maintain a Toll Road from Fort Benton to the Town of Gallatin.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. That William Graham, Henry Thompson, and John Lambert, are hereby authorized to establish and maintain a toll road from Fort Benton to the town of Gallatin on the east side of the Missouri river, and they shall construct the said road on the most practicable route and have the exclusive right of way for one mile on each side of said road which right is hereby granted to said company for the term of ten years from the passage of this act, and it shall be lawful for said company to collect the following rates of toll:

For each wagon with one span of mules, horses, or yoke of oxen, three dollars.....	\$ 3 00
For each additional span or yoke of animals.....	50
For each horse and rider or pack animal, one dollar.....	1 00
For loose stock, fifty cents per head.....	50
Sheep or hogs, twenty five cents.....	25

The said company shall construct said road within two years from the passage of this act. The said company shall not obstruct the navigation of the Missouri river. No part of this act shall be construed as to prohibit the county commissioners from fixing the rates of toll after three years from the passage of this act.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

AN ACT

To authorize Wm. B. Knott and J. W. Seaman, to construct and maintain a Ferry across Salmon river, at the mouth of French Creek.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1 That Wm. B. Knott, and J. Seaman, their heirs and assigns, be, and are hereby authorized to construct a ferry or bridge, at their option, across Salmon river in Idaho county, at or near the mouth of French creek, and for this purpose the said Knott and Seaman, their heirs and assigns, are hereby granted the exclusive right to establish and maintain a ferry or bridge, at their option, at said point, and for the distance of one mile up and down said river, from said point, and said franchise is hereby granted to them, for the term of ten years from the passage of this act.

SEC. 2. That said Knott and Seaman, their heirs and assigns, are hereby required to construct and maintain in good repair, good and sufficient boats, for the safe transport of all persons with their animals and teams, at all reasonable times, or to construct a substantial and safe bridge for such transportation, and keep the same in good repair and condition at all times during the continuance of this franchise.

SEC. 3. That said Knott and Seaman, their heirs and assigns, are hereby authorized to charge and collect ferriage or toll for transportation over such ferry or bridge, at the following rates, to-wit:..

For each wagon or vehicle with one horse, mule, or ox,	
the sum of.....	\$ 3 00
For each wagon or vehicle with one span of horses,	
mules, or one yoke of oxen.....	4 00
For each additional horse, mule, or ox attached.....	50
“ “ horse and rider.....	1 00
“ “ pack animal loaded.....	1 00
“ “ pack animal without load.....	50
“ loose cattle, mules or horses per head.....	25
“ sheep and hogs per head.....	10

SEC. 4. The county commissioners of Idaho county, after the expiration of three years from the date of this act, shall have authority to alter, or modify the above rates of ferriage, or toll, as in their judgment shall best subserve the interests of the public.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January, 22th, 1864.

AN ACT

Authorizing T. H. Stringham and others to build a Toll Road in Boise County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Thomas H. Stringham, R. C. Combs, J. B. Taylor and D. H. Helser, their heirs or assigns, be and they are hereby authorized to establish and keep a toll road from Buena Vista bar to Fort Boise, said road following down or near Moore's creek, from Buena Vista bar, to the Big Bend on the canon through which Moore's creek runs; thence from the fork in said road (as the same is now located) through said canon on Moore's creek, intersecting the government road near the government saw-mill, and from said Big Bend by Freezeout, over the route on which the road is now built, by way of Beaver Dick's ranch to Fort Boise, with the exclusive right of way for one mile on each side of said road, for the term of six years from the first day of January, A. D., 1864; *Provided*, That said road shall be subject to the same regulations and under the same restrictions as other roads are, or may hereafter be, by laws of this territory, prescribing the manner in which licensed roads shall be kept and regulated.

SEC. 2. That it shall be lawful for the said T. H. Stringham, R. C. Combs, J. B. Taylor and D. H. Helser, their heirs or assigns, to receive and collect the following rates of toll for travel upon said road:

For each wagon and one span of horses or mules, or one yoke of oxen.....	\$ 8 00
For riding animal and man.....	50
“ pack animal and pack.....	25
“ horse or mule without pack.....	12½
“ loose cattle, each.....	12½
“ hogs and sheep each.....	5

SEC. 3. That no court or board of county commissioners, shall authorize any person, except as hereinafter provided in

this act, to establish or keep a toll road within the limits set forth in this act; *Provided*, T. H. Stringham, R. C. Combs, J. B. Taylor, D. H. Helser, their heirs and assigns, shall keep said road open and improved and in good traveling condition, except when excess of snow, or ice, or breaking up of frost, shall make it impracticable, otherwise than the stipulations of this act, upon proof before the county commissioners, this act shall be void; *Provided*, That this act nor any part thereof, shall not be so construed as to prevent the county commissioners of Boise county at any time after the passage of this act, from altering and fixing the rates of toll herein mentioned over said road.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 29, 1864.

AN ACT

To authorize Thomas Prather to establish a Ferry over the Snake river in Boise County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Thomas Prather, his heirs and assigns, be, and they are hereby authorized to establish a ferry over the Snake river, at a point on said river four miles above the mouth of the Boise, and that he have the exclusive right to ferry on said river for a distance of two miles above, and two miles below the point selected for ferrying, for the period of ten years.

SEC. 2. That the said Thomas Prather shall, within six months from the passage of this act, have constructed, good, substantial flat boats for the transportation of the persons and property of all travelers that may offer, with sufficient employees to expedite transportation over said river.

SEC. 3. That the said Prather shall be allowed to charge the following fees for ferrying:

For a foot passenger.....	\$ 0 50
“ man and horse.....	1 00
“ packed animal.....	1 00
“ loose horses, each.....	50

For cattle other than work steers, each.....	87
“ sheep or hogs, each.....	15
“ a wagon with two horses or oxen.....	2 50
“ a wagon with four horses or oxen.....	3 50
“ a wagon with six horses or oxen.....	5 00

SEC. 4. That any failure on the part of the said Prather, to comply with this act, or any one of its provisions, shall be a forfeiture of his rights and privileges under this act.

SEC. 5. It shall be lawful for the county commissioners of Boise county, at any regular term of commissioners court, to reduce or increase the ferriage fees allowed by this act.

SEC. 6. This act to take effect, and be in force, from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

To authorize Reuben Olds, Rideout, & Co., to establish a Ferry on Snake river in Idaho County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. That Reuben Olds, Rideout, & Co., their heirs and assigns, be, and they are hereby authorized to establish and maintain a ferry on Snake river, at a point below the mouth of Weizer river, where the said Olds, Rideout, & Co., are now established and running a ferry across said river; *Provided*, That said ferry, when so established, which shall be within one month from the passage of this act, shall be provided with a good and sufficient boat for the accommodation of the traveling public, for wagons and animals, and also with a good skiff, and with a suitable number of hands to man said boats, and man said ferry; and, *Provided*, The same shall be run for the accommodation of the traveling public, and shall not be vacated for the space of thirty days at any one time, then this charter to remain in force for six years from the passage of this act, otherwise to be null and void.

SEC. 2. Said parties are to have the exclusive ferry privilege on said Snake river for one mile above and one mile below the point above named, for the term of years above named; *Provided*, That this act nor any part thereof, shall be

AN ACT

To legalize the acts of the County Commissioners and Sheriff of Boise county, in collecting the Revenue of said county.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. The acts of the county commissioners and sheriff of Boise county in ordering the collection of, and collecting the revenue of Boise county for the year eighteen hundred and sixty-three, after the time provided by law for the collection of the same had expired, are hereby legalized and made valid, as though said collecting had been made within the time limited by law.

SEC. 2. In all cases where said acts were wrongful and oppressive, the party aggrieved may recover damages by suit in the district court of said county, or the same court may, in its discretion, on any proper application, set aside the acts of said commissioners and sheriff.

SEC. 3. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

AN ACT

To authorize Joseph Herring to construct and keep a Bridge across the Spokane river, at or near a point where the Nez Perce trail intersects the Military road leading from Lewiston to Spokane prairie, crossing said river.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Joseph Herring, his heirs or assigns, be and they are hereby authorized to construct and keep a bridge across the Spokane river, at or near a point where the Nez Perce trail intersects the Military road leading from Walla Walla to Fort Benton, and across the same; and the said Joseph Herring shall have the exclusive privilege of con-

structing and maintaining a bridge at the aforesaid point, for the distance of one mile up and down said stream on each side of said point, for the term of ten years from the passage of this act: *Provided*, That said bridge when so constructed, shall be subject to the same regulations and under the same restrictions as other bridges are or may be by the laws of this territory, prescribing the manner in which bridges shall be kept and regulated.

SEC. 2. It shall be lawful for the said Joseph Herring, his heirs and assigns, to charge and collect the following rates of toll for crossing the said bridge:

For crossing a footman.....	\$ 25
“ “ man and horse.....	1 00
“ “ horse and pack.....	1 00
“ “ horse and buggy.....	1 50
“ “ a wagon and one yoke of oxen.....	2 00
“ “ each additional span of horses or yoke of oxen.....	1 00
“ “ loose horses or cattle, each.....	50
“ “ sheep or hogs, each.....	10

Provided, That the county commissioners of the county in which said bridge is or may be located at any regular term of the commissioners' court, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for the said Joseph Herring, his heirs and assigns, to collect and receive toll only according to the rates prescribed by said commissioners.

SEC. 3. That no courts or board of county commissioners shall authorize any person except as hereinafter provided in this act, to construct a bridge within the limits set out in this act: *Provided*, That the said Joseph Herring, his heirs or assigns, shall within twelve months after the passage of this act, have constructed a good, strong, substantial, and safe bridge; and should the laws regulating the construction of bridges and the establishing of ferries now, or such as may hereafter be in force, be violated by the said Joseph Herring, his heirs or assigns, or if no good and substantial bridge be constructed in the time specified by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of said county, then this act shall be null and void.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

To authorize Hill Beachey, his heirs and assigns to construct and maintain a Toll Road from Lewiston to the intersection of what is known as the Mullen road.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Hill Beachey, his heirs and assigns, are hereby authorized to construct and maintain a wagon toll road, from the north side of Clearwater river, opposite the town of Lewiston, in Nez Perce county, over and along the most direct and practicable route, to be hereafter selected by said Beachey, his heirs and assigns, to intersect what is known as Mullen's military road, leading from Walla Walla to Fort Benton, said authority to continue for the period of ten years from the date of this act, and the said Beachey, his heirs and assigns, are hereby granted the exclusive right of way over and along said route so selected and for a distance of one mile on either side of said route for the period herein named.

SEC. 2. That within five months from the date of the passage of this act, the said Beachey, his heirs and assigns, shall commence the work of the construction of said road, and within six months thereafter they shall complete the same, otherwise this franchise shall become void.

SEC. 3. The said Beachey, his heirs and assigns, where required shall build substantial bridges and culverts over and along said route, and when needed, to grade said road, and keep it in good repair and condition at all times, as to render transportation in wagons of persons and property both safe and speedy.

SEC. 4. That whenever said Beachey, his heirs and assigns, shall have completed the construction of said road, as aforesaid, they shall be authorized to erect one or more toll gates on said road and charge and collect toll thereat; *Provided*, That the aggregate toll, for the whole line of said road, does not exceed the following rates, to-wit:

For each wagon or vehicle drawn by one horse, mule,	
or ox.....	\$ 2 00
“ “ wagon or vehicle drawn by one span of	
horses, mules or one yoke of oxen.....	4 00
“ “ additional horse, mule, or ox.....	50

SEC. 5. The county commissioners of Nez Perce county, after the expiration of three years, from the date of the com-

pletion of said road, shall have authority to alter or modify the above rate of toll as in their judgment the public interest may require.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

Authorizing James R. Wiley and Nathan Cornish to establish and maintain a Toll Road in Boise county.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. James R. Wiley, and Nathan Cornish, their heirs, successors, and assigns are hereby granted the right and privilege to establish and maintain a toll road from the village of Placerville, in Boise Basin, in Boise county, Idaho territory, to Bannock City in said territory. Said road is to commence at the village of Placerville, running thence in an easterly direction to the village of Centerville in said basin, and thence in an easterly direction, to Bannock City, over the route heretofore established by said parties and now occupied and used by them as a toll road.

SEC. 2. The said parties shall have the right to charge and collect toll on said road not exceeding the following rates: Loaded wagons, and one span of horses, mules, or

yoke of oxen.....	\$ 2 00
Each additional animal.....	50
Empty teams returning, shall be charged only half price.	
Buggy and two horses.....	1 50
“ “ one horse.....	1 00

SEC. 3. The said parties may also establish toll gates at one or more points on said road and collect tolls thereat, provided the aggregate tolls so collected shall not exceed the rates as designated in section two of this act; and *Provided further*, That not more than one-third of the above rates designated in section two, shall be charged for traveling only between Centerville and Placerville, and two-thirds of said rates for traveling only between Centerville and Bannock City. And said

have the exclusive privilege of ferrying upon said river for a distance of two and a half miles up and down said river from the crossing of said trail, for the term of ten (10) years from and after the passage of this act: *Provided*, That said ferry, when established, shall be subject to the same regulations and under the same restrictions as other ferries may hereafter be by laws of this territory; prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said James Silcott, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said river, viz:

For each foot passenger.....	\$	50
“ “ loose animal other than sheep or hog.....		50
“ “ wagon, one span of mules, horses or yoke of oxen.....		4 00
“ “ additional pair of animals.....		1 50
“ “ riding or pack animal.....		1 50
“ sheep or hogs each.....		20

SEC. 3. The board of county commissioners of the county in which said ferry is or may hereafter be located, shall have power to alter the foregoing ferry rates, after two years, upon the petition of thirty *bona fide* citizens of the county in which said ferry is or may hereafter be located; but nothing herein contained shall be so construed as to prevent the legislature from altering or annulling the foregoing ferry rates after the passage of this act.

SEC. 4. The said James Silcott, his heirs and assigns, shall, within four months after the passage of this act, procure for said ferry a good and sufficient flat boat or boats, with one small boat, which shall be kept at all times at the said ferry, with sufficient hands to work them for the transportation of all persons and their property across the said river without delay, and should the laws which may hereafter be in force in this territory be violated by the said James Silcott, his heirs or assigns, or, if no good and sufficient flat boats, with hands sufficient to work them, be provided within the time required by this act, upon proof thereof being made, to the satisfaction of the board of county commissioners of the county in which said ferry is or may hereafter be located, then this act shall be void and of none effect.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 2nd, 1864.

structing and maintaining a bridge at the aforesaid point, for the distance of one mile up and down said stream on each side of said point, for the term of ten years from the passage of this act: *Provided*, That said bridge when so constructed, shall be subject to the same regulations and under the same restrictions as other bridges are or may be by the laws of this territory, prescribing the manner in which bridges shall be kept and regulated.

SEC. 2. It shall be lawful for the said Joseph Herring, his heirs and assigns, to charge and collect the following rates of toll for crossing the said bridge:

For crossing a footman.....	\$	25
“ “ man and horse.....	1	00
“ “ horse and pack.....	1	00
“ “ horse and buggy.....	1	50
“ “ a wagon and one yoke of oxen.....	2	00
“ “ each additional span of horses or yoke of oxen.....	1	00
“ “ loose horses or cattle, each.....	50	
“ “ sheep or hogs, each.....	10	

Provided, That the county commissioners of the county in which said bridge is or may be located at any regular term of the commissioners' court, shall have power to alter the above rates of toll, and when so altered, it shall be lawful for the said Joseph Herring, his heirs and assigns, to collect and receive toll only according to the rates prescribed by said commissioners.

SEC. 3. That no courts or board of county commissioners shall authorize any person except as hereinafter provided in this act, to construct a bridge within the limits set out in this act: *Provided*, That the said Joseph Herring, his heirs or assigns, shall within twelve months after the passage of this act, have constructed a good, strong, substantial, and safe bridge; and should the laws regulating the construction of bridges and the establishing of ferries now, or such as may hereafter be in force, be violated by the said Joseph Herring, his heirs or assigns, or if no good and substantial bridge be constructed in the time specified by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of said county, then this act shall be null and void.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

To authorize Hill Beachey, his heirs and assigns to construct and maintain a Toll Road from Lewiston to the intersection of what is known as the Mullen road.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Hill Beachey, his heirs and assigns, are hereby authorized to construct and maintain a wagon toll road, from the north side of Clearwater river, opposite the town of Lewiston, in Nez Perce county, over and along the most direct and practicable route, to be hereafter selected by said Beachey, his heirs and assigns, to intersect what is known as Mullen's military road, leading from Walla Walla to Fort Benton, said authority to continue for the period of ten years from the date of this act, and the said Beachey, his heirs and assigns, are hereby granted the exclusive right of way over and along said route so selected and for a distance of one mile on either side of said route for the period herein named.

SEC. 2. That within five months from the date of the passage of this act, the said Beachey, his heirs and assigns, shall commence the work of the construction of said road, and within six months thereafter they shall complete the same, otherwise this franchise shall become void.

SEC. 3. The said Beachey, his heirs and assigns, where required shall build substantial bridges and culverts over and along said route, and when needed, to grade said road, and keep it in good repair and condition at all times, as to render transportation in wagons of persons and property both safe and speedy.

SEC. 4. That whenever said Beachey, his heirs and assigns, shall have completed the construction of said road, as aforesaid, they shall be authorized to erect one or more toll gates on said road and charge and collect toll thereat; *Provided*, That the aggregate toll, for the whole line of said road, does not exceed the following rates, to-wit:

For each wagon or vehicle drawn by one horse, mule,	
or ox.....	\$ 2 00
“ “ wagon or vehicle drawn by one span of	
horses, mules or one yoke of oxen.....	4 00
“ “ additional horse, mule, or ox.....	50

SEC. 5. The county commissioners of Nez Perce county, after the expiration of three years, from the date of the com-

pletion of said road, shall have authority to alter or modify the above rate of toll as in their judgment the public interest may require.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

Authorizing James R. Wiley and Nathan Cornish to establish and maintain a Toll Road in Boise county.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. James R. Wiley, and Nathan Cornish their heirs, successors, and assigns are hereby granted the right and privilege to establish and maintain a toll road from the village of Placerville, in Boise Basin, in Boise county, Idaho territory, to Bannock City in said territory. Said road is to commence at the village of Placerville, running thence in an easterly direction to the village of Centerville in said basin, and thence in an easterly direction, to Bannock City, over the route heretofore established by said parties and now occupied and used by them as a toll road.

SEC. 2. The said parties shall have the right to charge and collect toll on said road not exceeding the following rates: Loaded wagons, and one span of horses, mules, or

yoke of oxen.....	\$ 2 00
Each additional animal.....	50
Empty teams returning, shall be charged only half price.	
Buggy and two horses.....	1 50
“ “ one horse.....	1 00

SEC. 3. The said parties may also establish toll gates at one or more points on said road and collect tolls thereat, provided the aggregate tolls so collected shall not exceed the rates as designated in section two of this act; and *Provided further*, That not more than one-third of the above rates designated in section two, shall be charged for traveling only between Centerville and Placerville, and two-thirds of said rates for traveling only between Centerville and Bannock City. And said

company are required to keep said road in good repair and condition, except in times of very deep snow, and in such case toll shall not be charged during the time said road is not kept open in a passable condition for teams.

SEC. 4. Said parties and their successors or assigns shall have and enjoy all the rights and immunities thereto appertaining, and shall have the exclusive right of way across and through the lands and territory, lying between the said point of beginning at Placerville, running to Centerville and thence to Bannock, the place of termination, on the line of said road before described for one mile each side of said road, which right, is hereby granted and ceded to the parties for the term of six years from the passage of this act; *Provided*, That within four months the said parties shall complete the construction of said road, otherwise the right to construct the same shall be forfeited and become null and void.

SEC. 5. After two years from the construction of said road the county of Boise may have the right to purchase said road at an appraised value to be determined by five appraisers, two to be selected by the said parties owning said toll road, two by the county commissioners, and one to be selected by the four appraisers hereinbefore provided for, and such valuation shall be estimated to be the value of the road; *Provided, further*, That nothing herein contained shall be so construed as to interfere with the right to build a road or roads from the points mentioned in this act to other points not mentioned. It shall be lawful for the county commissioners of Boise county at any time after the passage of this act, to alter and fix the rates of toll over said road.

SEC. 6. Said parties shall keep at each toll gate a bulletin board on which shall be intelligibly painted each rate of toll as prescribed by this act; *Provided, also*, That no toll gate shall be established within one mile of either of the points mentioned on said road.

SEC. 7. This act shall take effect and be in force from and after its approval by the governor.

APPROVED, January 29th, 1864.

AN ACT

To establish and maintain a Toll Road from Fort Benton to the Town of Gallatin.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. That William Graham, Henry Thompson, and John Lambert, are hereby authorized to establish and maintain a toll road from Fort Benton to the town of Gallatin on the east side of the Missouri river, and they shall construct the said road on the most practicable route and have the exclusive right of way for one mile on each side of said road which right is hereby granted to said company for the term of ten years from the passage of this act, and it shall be lawful for said company to collect the following rates of toll:

For each wagon with one span of mules, horses, or yoke of oxen, three dollars.....	\$ 3 00
For each additional span or yoke of animals.....	50
For each horse and rider or pack animal, one dollar.....	1 00
For loose stock, fifty cents per head.....	50
Sheep or hogs, twenty five cents.....	25

The said company shall construct said road within two years from the passage of this act. The said company shall not obstruct the navigation of the Missouri river. No part of this act shall be construed as to prohibit the county commissioners from fixing the rates of toll after three years from the passage of this act.

SEC. 2. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 4th, 1864.

AN ACT

To authorize Wm. B. Knott and J. W. Seaman, to construct and maintain a Ferry across Salmon river, at the mouth of French Creek.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1 That Wm. B. Knott, and J. Seaman, their heirs and assigns, be, and are hereby authorized to construct a ferry or bridge, at their option, across Salmon river in Idaho county, at or near the mouth of French creek, and for this purpose the said Knott and Seaman, their heirs and assigns, are hereby granted the exclusive right to establish and maintain a ferry or bridge, at their option, at said point, and for the distance of one mile up and down said river, from said point, and said franchise is hereby granted to them, for the term of ten years from the passage of this act.

SEC. 2. That said Knott and Seaman, their heirs and assigns, are hereby required to construct and maintain in good repair, good and sufficient boats, for the safe transport of all persons with their animals and teams, at all reasonable times, or to construct a substantial and safe bridge for such transportation, and keep the same in good repair and condition at all times during the continuance of this franchise.

SEC. 3. That said Knott and Seaman, their heirs and assigns, are hereby authorized to charge and collect ferriage or toll for transportation over such ferry or bridge, at the following rates, to-wit:.

For each wagon or vehicle with one horse, mule, or ox,	
the sum of.....	\$ 3 00
For each wagon or vehicle with one span of horses,	
mules, or one yoke of oxen.....	4 00
For each additional horse, mule, or ox attached.....	50
“ “ horse and rider.....	1 00
“ “ pack animal loaded.....	1 00
“ “ pack animal without load.....	50
“ loose cattle, mules or horses per head.....	25
“ sheep and hogs per head.....	10

SEC. 4. The county commissioners of Idaho county, after the expiration of three years from the date of this act, shall have authority to alter, or modify the above rates of ferriage, or toll, as in their judgment shall best subserve the interests of the public.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January, 22th, 1864.

AN ACT

Authorizing T. H. Stringham and others to build a Toll Road in Boise County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Thomas H. Stringham, R. C. Combs, J. B. Taylor and D. H. Helser, their heirs or assigns, be and they are hereby authorized to establish and keep a toll road from Buena Vista bar to Fort Boise, said road following down or near Moore's creek, from Buena Vista bar, to the Big Bend on the canon through which Moore's creek runs; thence from the fork in said road (as the same is now located) through said canon on Moore's creek, intersecting the government road near the government saw-mill, and from said Big Bend by Freezeout, over the route on which the road is now built, by way of Beaver Dick's ranch to Fort Boise, with the exclusive right of way for one mile on each side of said road, for the term of six years from the first day of January, A. D., 1864; *Provided*, That said road shall be subject to the same regulations and under the same restrictions as other roads are, or may hereafter be, by laws of this territory, prescribing the manner in which licensed roads shall be kept and regulated.

SEC. 2. That it shall be lawful for the said T. H. Stringham, R. C. Combs, J. B. Taylor and D. H. Helser, their heirs or assigns, to receive and collect the following rates of toll for travel upon said road:

For each wagon and one span of horses or mules, or one yoke of oxen.....	\$ 3 00
For riding animal and man.....	50
“ pack animal and pack.....	25
“ horse or mule without pack.....	12½
“ loose cattle, each.....	12½
“ hogs and sheep each.....	5

SEC. 3. That no court or board of county commissioners, shall authorize any person, except as hereinafter provided in

this act, to establish or keep a toll road within the limits set forth in this act; *Provided*, T. H. Stringham, R. C. Combs, J. B. Taylor, D. H. Helser, their heirs and assigns, shall keep said road open and improved and in good traveling condition, except when excess of snow, or ice, or breaking up of frost, shall make it impracticable, otherwise than the stipulations of this act, upon proof before the county commissioners, this act shall be void; *Provided*, That this act nor any part thereof, shall not be so construed as to prevent the county commissioners of Boise county at any time after the passage of this act, from altering and fixing the rates of toll herein mentioned over said road.

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 29, 1864.

AN ACT

To authorize Thomas Prather to establish a Ferry over the Snake river in Boise County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Thomas Prather, his heirs and assigns, be, and they are hereby authorized to establish a ferry over the Snake river, at a point on said river four miles above the mouth of the Boise, and that he have the exclusive right to ferry on said river for a distance of two miles above, and two miles below the point selected for ferrying, for the period of ten years.

SEC. 2. That the said Thomas Prather shall, within six months from the passage of this act, have constructed, good, substantial flat boats for the transportation of the persons and property of all travelers that may offer, with sufficient employees to expedite transportation over said river.

SEC. 3. That the said Prather shall be allowed to charge the following fees for ferrying:

For a foot passenger.....	\$ 0 50
“ man and horse.....	1 00
“ packed animal.....	1 00
“ loose horses, each.....	50

For cattle other than work steers, each.....	87
“ sheep or hogs, each.....	15
“ a wagon with two horses or oxen.....	2 50
“ a wagon with four horses or oxen.....	8 50
“ a wagon with six horses or oxen.....	5 00

SEC. 4. That any failure on the part of the said Prather, to comply with this act, or any one of its provisions, shall be a forfeiture of his rights and privileges under this act.

SEC. 5. It shall be lawful for the county commissioners of Boise county, at any regular term of commissioners court, to reduce or increase the ferriage fees allowed by this act.

SEC. 6. This act to take effect, and be in force, from and after its approval by the governor.

APPROVED January 22, 1864.

AN ACT

To authorize Reuben Olds, Rideout, & Co., to establish a Ferry on Snake river in Idaho County.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Reuben Olds, Rideout, & Co., their heirs and assigns, be, and they are hereby authorized to establish and maintain a ferry on Snake river, at a point below the mouth of Weizer river, where the said Olds, Rideout, & Co., are now established and running a ferry across said river; *Provided*, That said ferry, when so established, which shall be within one month from the passage of this act, shall be provided with a good and sufficient boat for the accommodation of the traveling public, for wagons and animals, and also with a good skiff, and with a suitable number of hands to man said boats, and man said ferry; and, *Provided*, The same shall be run for the accommodation of the traveling public, and shall not be vacated for the space of thirty days at any one time, then this charter to remain in force for six years from the passage of this act, otherwise to be null and void.

SEC. 2. Said parties are to have the exclusive ferry privilege on said Snake river for one mile above and one mile below the point above named, for the term of years above named; *Provided*, That this act nor any part thereof, shall be

so construed as to prohibit the county commissioners from altering and fixing the rates of toll, at the expiration of three years from the passage of this act.

SEC. 3. It shall be lawful for said parties, their heirs or assigns, to collect the following rates of toll, for ferrying on said ferry:

For one team with wagon.....	\$ 3 00
“ every extra team.....	1 00
“ each pack animal, loaded.....	75
“ pack animals returning, each.....	50
“ horse and rider.....	75
“ footman.....	25
“ loose animals, each.....	25

SEC. 4. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 22, 1864.

AN ACT

To authorize Charles W. Frush and his associates to establish a Ferry across the Pen d' Oreille or Clark's Fork of the Columbia river.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Charles W. Frush, his heirs and assigns, be, and they are hereby authorized to establish a ferry across the Pen d' Oreille or Clark's fork of the Columbia river, at or near the point where the military or boundy commission road crosses said river; and that the said Charles W. Frush, his heirs and assigns, have the exclusive privilege of ferrying upon said river for the distance of one mile up and down the river, each way from the crossing of said road, for the term of ten (10) years from the passage of this act: *Provided*, That said ferry, when so established, shall be subject to the same regulations and under the same restrictions as other ferries are or may hereafter be by law of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said Charles W. Frush, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said river, viz:

For each footman.....	\$ 50
“ “ man and horse.....	1 50
“ “ carriage, cart and horse.....	2 00
“ “ carriage, wagon and two animals.....	4 00
“ “ additional span of horses or cattle.....	2 00
“ “ loose animal other than sheep or hogs.....	50
“ “ sheep or hog.....	25

SEC. 3. The county commissioners court of _____ county shall have power to alter the foregoing ferry rates after one year upon the petition of thirty *bona fide* citizens of _____ county; but nothing herein contained shall be so construed as to prevent the legislature from altering or amending the foregoing ferry rates after the passage of this act.

SEC. 4. The said Charles W. Frush, his heirs and assigns, shall, at all times, keep at said ferry a good and sufficient flat boat, and small boat, with sufficient hand or hands to work the same, for the transportation of persons and their property across said river without unnecessary delay, and upon proof being made to the county commissioners court of _____ county that the said Charles W. Frush, his heirs and assigns, have failed or refused to keep at said ferry good and sufficient boats, with sufficient hand or hands to work the same, as required in the foregoing, then this act shall be null and void.

SEC. 5. All acts or parts of acts in conflict with this act are hereby repealed.

SEC. 6. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 6th, 1864.

AN ACT

To authorize James Silcott, his heirs and assigns, to establish a Ferry on the St. Joseph river.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That James Silcott, his heirs and assigns, be, and they are hereby authorized to establish a ferry across the St. Joseph river, at or near the point where the direct or main trail leading to the Couer d' Alene Mission crosses said river, and that the said James Silcott, his heirs and assigns, shall

have the exclusive privilege of ferrying upon said river for a distance of two and a half miles up and down said river from the crossing of said trail, for the term of ten (10) years from and after the passage of this act: *Provided*, That said ferry, when established, shall be subject to the same regulations and under the same restrictions as other ferries may hereafter be by laws of this territory; prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said James Silcott, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said river, viz:

For each foot passenger.....	\$ 50
“ “ loose animal other than sheep or hog.....	50
“ “ wagon, one span of mules, horses or yoke of oxen.....	4 00
“ “ additional pair of animals.....	1 50
“ “ riding or pack animal.....	1 50
“ sheep or hogs each.....	20

SEC. 3. The board of county commissioners of the county in which said ferry is or may hereafter be located, shall have power to alter the foregoing ferry rates, after two years, upon the petition of thirty *bona fide* citizens of the county in which said ferry is or may hereafter be located; but nothing herein contained shall be so construed as to prevent the legislature from altering or annulling the foregoing ferry rates after the passage of this act.

SEC. 4. The said James Silcott, his heirs and assigns, shall, within four months after the passage of this act, procure for said ferry a good and sufficient flat boat or boats, with one small boat, which shall be kept at all times at the said ferry, with sufficient hands to work them for the transportation of all persons and their property across the said river without delay, and should the laws which may hereafter be in force in this territory be violated by the said James Silcott, his heirs or assigns, or, if no good and sufficient flat boats, with hands sufficient to work them, be provided within the time required by this act, upon proof thereof being made, to the satisfaction of the board of county commissioners of the county in which said ferry is or may hereafter be located, then this act shall be void and of none effect.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 2nd, 1864.

AN ACT

To authorize S. A. Woodward and L. P. Brown to construct and maintain a Toll Road from Brown's Mountain house, in Nez Perce county, to Florence, in Idaho county.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That S. A. Woodward and L. P. Brown, their heirs and assigns, be and are hereby authorized to construct and maintain a toll road from what is known as Brown's Mountain house in Nez Perce county, along the most direct and practicable route to Florence, in Idaho county, for the period of ten years after the approval of this act by the governor, and for this purpose the right of way over and along said route when situated, and for the distance of one mile on either side of said route, is hereby exclusively granted to said Woodward and Brown, their heirs and assigns.

SEC. 2. That it shall be the duty of said Woodward and Brown, or their heirs and assigns, to construct within eighteen months from the passage of this act, a good wagon road, with substantial bridges and culverts over and along said route, for the safe and speedy transportation of persons and property, and keep the same in good repair and condition at all times.

SEC. 3. That whenever said parties have so far constructed said road as to admit the passage of horsemen, pack animals, and loose stock over said route, they shall be authorized to erect a toll gate somewhere upon the line of said road, and receive toll as prescribed in this statute.

SEC. 4. That whenever said parties have completed the construction of said wagon road, so as to admit the safe passage of wagons and teams over said route, they shall be authorized to receive toll for such wagons and teams, as prescribed in this act: *Provided*, That said wagon road shall be completed and in good condition for the passage of wagons and teams within two years from the date of this act, otherwise this charter shall become forfeited.

SEC. 5. The said Woodward and Brown, their heirs and assigns, shall be at liberty to charge and collect from persons traveling over and along said road, toll at the following rates, viz:

For each wagon or vehicle drawn by one span of horses or mules, or one yoke of cattle.....	\$3 00
“ “ additional animal.....	50
“ “ horseman.....	1 00
“ “ loaded pack animal.....	50
“ loose cattle, per head.....	25
“ sheep and hogs, per head.....	10

SEC. 6. The county commissioners of Idaho county, after the expiration of three years from the date of this act, shall have authority to alter or modify the above rates of toll, as in their judgment the public interests may require.

SEC. 7. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 22d, 1864.

AN ACT

Establishing Counties, County Boundaries and County Seats,
East of the Bitter Root Mountains.

*Be it enacted by the Legislative Assembly of the Territory of Idaho
as follows:*

SECTION 1. That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Missoula county, to-wit: Commencing at the point of intersection of the parallel latitude forty-nine degrees with the line of longitude one hundred and sixteen degrees, thence along said line of longitude, south to the summit of the Bitter Root mountains, and along summit of Bitter Root mountains in a southern direction to the summit of Rocky mountains, and along said summit of Rocky mountains to summit of mountains dividing Deer Lodge valley from Bitter Root valley, in a northwesterly direction to meridian of longitude one hundred and thirteen degrees thirty minutes, and along said meridian one hundred and thirteen degrees thirty minutes to parallel forty-nine degrees, and along said parallel of latitude to place of beginning; and the county seat of said county of Missoula is hereby located at Wordensville.

SEC. 2. *Be it further enacted,* That all that portion of Idaho

territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Deer Lodge county, to-wit: Commencing at the point of intersection of the parallel of latitude forty-nine degrees with the line of longitude one hundred and thirteen degrees thirty minutes, thence along said forty-ninth parallel to meridian of longitude one hundred and twelve degrees, and thence south along said one hundred and twelfth meridian to the summit of the Rocky mountains, and along said summit in a southern and western direction to boundary line of Missoula county, and thence in a northerly direction along said boundary of Missoula county to place of beginning; and the county seat of said county of Deer Lodge, be and the same is hereby located at Idaho city (near the Cottonwood fork of Deer Lodge river).

SEC. 3. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Beaver Head county, to-wit: Commencing at summit of the Rocky mountains where the Salt Lake and Deer Lodge road crosses the summit of said Rocky mountains, and from thence in a direct line to the Point of Rocks on Beaver Head creek, and from thence in direct line south to summit of Rocky mountains, and along the summit of Rocky mountains to place of beginning; and the county seat of said county of Beaver Head, be and the same is hereby located at Bannack city.

SEC. 4. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Madison county, to-wit: Commencing at the point where the line of longitude one hundred and eleven degrees crosses the summit of Rocky mountains, and thence along said longitude one hundred and eleven degrees, to parallel of latitude forty-five degrees forty-five minutes, and thence along said parallel forty-five degrees forty-five minutes to the boundary of Beaver Head county, and thence along said boundary of Beaver Head county to the summit of Rocky mountains, and thence along said summit to place of beginning; and the county seat of said county of Madison, is hereby located at Virginia city.

SEC. 5. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Jefferson county, to-wit: Commencing at the point where the parallel of latitude forty-seven degrees and longitude one hundred and twelve degrees intersects, and along said parallel of latitude

forty-seven degrees to longitude one hundred and nine degrees, and along said meridian one hundred and nine degrees, south to parallel forty-five degrees, and along said parallel of latitude forty-five degrees, to boundary of Madison county, and thence along said boundary north to forty-five degrees forty-five minutes, and thence west to Beaver Head county, and thence along the boundary of said Beaver Head county to summit of Rocky mountains, and thence along said mountains to meridian of longitude one hundred and twelve degrees, thence north along said meridian one hundred and twelve degrees to place of beginning; and the county seat of said Jefferson county, be and the same is hereby located at the town of Gallatin.

SEC. 6. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, known as Choteau county, to-wit: Commencing where parallel of latitude forty-seven degrees and meridian of longitude one hundred and twelve degrees intersect, and from thence along said parallel forty-seven degrees to meridian of longitude one hundred and eight degrees, and north along such meridian to forty-ninth parallel of latitude, and from thence along said parallel forty-nine degrees to meridian of longitude one hundred and twelve degrees, and from thence south along said meridian one hundred and twelve degrees to place of beginning; and the county seat of said county of Choteau, be and the same is hereby located at the town of Fort Benton.

SEC. 7. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Dawson county, to-wit: Commencing at the intersecting point of parallel of latitude forty-seven degrees with the meridian of longitude one hundred and eight degrees, and thence along said parallel forty-seven degrees to meridian of longitude one hundred and four degrees, and from thence along said meridian north to forty-ninth parallel of latitude, and from thence along said parallel forty-nine degrees, to meridian of longitude one hundred and eight degrees, and from thence south along said meridian to place of beginning; and the county seat of said county of Dawson, be and the same is hereby located at Fort Andrew.

SEC. 8. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Big Horn county, to-wit: Commencing at the point of intersection of parallel of latitude forty-seven degrees and meridian of lon-

gitude one hundred and nine degrees, and from thence along said parallel forty-seven degrees, east to meridian of longitude one hundred and four degrees, and from thence along said meridian one hundred and four degrees south to parallel of latitude forty-five degrees, and from thence along said parallel forty-five degrees, west to meridian of longitude one hundred and nine degrees, and from thence along said meridian north to place of beginning; the county seat of said county of Big Horn shall be located by the county commissioners, till otherwise provided by law.

SEC. 9. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Ogalala county, to-wit: All that portion of Idaho territory situated south of the forty-fifth parallel of latitude, and east of the one hundred and eighth meridian of longitude; the county seat of said county of Ogalala is hereby temporarily located at Fort Laramie.

SEC. 10. *Be it further enacted*, That all that portion of Idaho territory embraced within the following boundaries, be and the same is hereby created a county, to be known as Yellowstone county, to-wit: All that portion of Idaho territory east of the Rocky mountains, not included in the counties above described, be and the same is hereby created a county, to be called Yellowstone county; the county commissioners of the county of Yellowstone, shall temporarily locate the county seat of said county until otherwise provided by law.

SEC. 11. This act to take effect and be in force from and after its approval by the governor.

APPROVED, January 16th, 1864.

AN ACT

To authorize Charles Addis to establish a Ferry across the Couer d' Alene river.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows :

SECTION 1. That Charles Addis, his heirs and assigns, be, and they are hereby authorized to establish and keep a ferry across the Couer d' Alene river, at or near the point where the

main trail leading to Couer d' Alene Mission crosses said river, and that the said Charles Addis, his heirs and assigns, shall have the exclusive privilege of ferrying upon said river for a distance of two and a half miles up and down the same, from the crossing of said trail, for the term of ten (10) years from and after the passage of this act: *Provided*, That said ferry, when established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may hereafter be by law of this territory, prescribing the manner in which licensed ferries shall be kept and regulated.

SEC. 2. It shall be lawful for the said Charles Addis, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said river:

For each foot passenger.....	\$	50
“ loose animals other than sheep or hogs.....		50
“ one wagon, one span of mules, horses or yoke of cattle.....		4 00
“ “ additional pair of animals.....		1 00
“ “ riding or pack animal.....		1 50
“ sheep or hogs each.....		20

SEC. 3. The county commissioners of the county in which the said ferry is or may be situated, shall have power to alter the foregoing ferry rates after two years, upon the petition of thirty *bona fide* citizens of said county; but nothing herein contained shall be so construed as to prevent the legislature from altering or amending the foregoing ferry rates after the passage of this act.

SEC. 4. The said Charles Addis, his heirs and assigns, shall, within five months after the passage of this act, procure for said ferry a good and sufficient flat boat or boats, with a small boat, which shall be kept at all times at the said ferry, with sufficient hands to work the same, for the transportation of all persons and property across the said river without delay, and should the laws which may hereafter be in force in this territory be violated by the said Charles Addis, his heirs or assigns, or if no good and sufficient flat boats, with hands sufficient to work the same, be provided within the time required by this act, upon proof thereof being made to the satisfaction of the board of county commissioners of said county, then this act shall be void and of none effect.

SEC. 5. This act shall take effect and be in force from and after its passage.

APPROVED, February 2nd, 1864.

AN ACT

To authorize Wesley Mulkey to establish and maintain a Ferry on Clearwater river.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That Wesley Mulkey, his heirs or assigns, be, and they are hereby authorized to establish and maintain a ferry across the Clearwater river in Nez Perce county, in said territory, commencing at a point about two miles from a ferry located on the Clearwater river at Lewiston, and to land and deposit from each shore of said river, and extending from said point up and down said river on each side thereof, for one mile each way; and that the said Wesley Mulkey, his heirs and assigns, have the exclusive privilege of ferrying across said river within the above limits for the term of six years from the passage of this act; *Provided*, That said ferry when established, shall be subject to the same regulations and under the same restrictions as other ferries are, or may be by the laws of said territory, prescribing the manner in which ferries shall be kept and regulated.

SEC. 2. That it shall be lawful for said Wesley Mulkey, his heirs and assigns, to receive and collect the following rates of toll for ferriage upon said ferry:

For each wagon or carriage, with two animals attached..	\$ 4 00
“ “ additional span, or yoke of cattle.....	1 00
“ man and horse.....	1 50
“ pack animals, each.....	1 50
“ foot passenger.....	50
“ loose cattle or horses, each.....	50
“ sheep and hogs, each.....	20

SEC. 3. The county commissioners of the said county in which said ferry is or may be situated, may at any regular term of said commissioners' court, regulate and fix the rate of toll to be received by said Wesley Mulkey, his heirs or assigns, after which, he or they shall only be authorized to receive the rate of toll so fixed by said commissioners' court.

SEC. 4. That the said Wesley Mulkey, his heirs or assigns shall within one year from the passage of this act, procure and keep at the said ferry, a sufficient number of flat boats, and the necessary number of hands to work them to transport persons and their property without delay.

SEC. 5. This act to take effect and be in force from and after its approval by the governor.

APPROVED February 4th, 1864.

AN ACT

Authorizing A. J. Mallet, his associates and assigns, to construct an Electro Telegraph Line, between a point on Snake river opposite the junction of the boundary lines of the State of Oregon and the Territory of Washington, to the dividing line between Idaho Territory and Utah Territory.

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. That the right and privilege be and the same is hereby granted to A. J. Mallet, his associates and assigns to construct and put in operation an electro telegraph line from a point on Snake river, opposite the junction of the boundary lines between the state of Oregon and territory of Washington, by the way of Placerville, Bannock City, in Boise county, to the dividing line between Idaho territory and Utah territory, following the nearest and most practicable route leading from the point aforesaid, on Snake river, to Salt Lake City in Utah territory, with the right of way over any lands under the control of the authorities of the territory of Idaho, and over and along any streets, alleys, public roads or highways or over any water courses; provided that no obstruction is made to travel on the public highway or to navigation by the erection of said electro telegraph line.

SEC. 2. This line when constructed shall be bound to do the business of other lines connected therewith, but no other line shall do business over this line (except by agreement) between the points before named, or intermediate points or places.

SEC. 3. This line shall be bound to transmit all dispatches, in the order in which they are received, under a penalty of one hundred dollars to be recovered with costs of suit by the person or persons suffering damages therefrom; *Provided, however,* That an arrangement may be made with the proprietors or publishers of newspapers for the transmission of

intelligence of a general character, out of the general order, when intended for publication; and *Provided, further*, That in case of war or insurrection, preference shall be given to the despatches of officers of the army and navy of the United States, when such despatches relate to their official duties, and preferences shall be given to the sheriffs and other officials for the transmission of intelligence having for its object the capture or apprehension of criminals or fugitives from justice.

SEC. 4. The party named in the first section of this act or his associates or assigns, shall proceed within one year from the passage of this act, to incorporate themselves under its provisions, by giving notice through the columns of at least one newspaper printed in this territory, of the first meeting of the stockholders, stating the time and place when said meeting will be held.

SEC. 5. The management of this company shall be vested in five directors, to be chosen by the stockholders, who shall hold office for one year, and until their successors are elected and qualified, and a majority of said directors shall constitute a quorum to do and transact all business, to elect a president of the board who shall be president of the company, and they shall have power to elect a clerk and treasurer and such other officers or agents as they may determine, and said board of directors shall have power to make all such rules and by-laws as they shall see fit, not repugnant to the laws of congress or of this territory.

SEC. 6. The annual meeting of the stockholders of the corporation shall be held on the day prescribed by the by-laws and at such place as the directors for the time being shall appoint, or the by-laws prescribe.

SEC. 7. The capital stock of this corporation shall be any sum not exceeding one hundred thousand dollars, in shares of hundred dollars each, and whenever the sum of five thousand dollars shall be subscribed to the capital stock, the corporation shall have power to make assessments, collect the same, and proceed to the erection or construction of the line; *Provided*, That the work necessary to the construction of this line shall be commenced within twelve months from the passage of this act; and *Provided, further*, That the line shall be completed within five years.

SEC. 8. This act to take effect and be in force from and after its approval by the governor.

APPROVED, February 2d, 1864.

JOINT RESOLUTION.

Resolved by the House of Representatives, the Council concurring herein, That the town in Boise county heretofore known as Fort Hogem be, and the same is hereby changed to the name of Pioneer City.

APPROVED, January 4th, 1864.

MEMORIAL.

For a Military Road connecting the navigable waters of the Columbia with the navigable waters of the Missouri river.

To the Honorable, the Senate and House of Representatives of the United States in Congress assembled: Your memorialists, the Legislative Assembly of the Territory of Idaho, would respectfully represent:

FIRST. That the territory of Idaho is traversed by the great chain of the Rocky mountains and the lesser chain of the Bitter Root mountains, which form barriers both difficult and formidable to travel, and therefore require an outlay of money to render transit easy from east to west, more than the infantile resources and unorganized condition of our population will warrant us to expend for several years hence.

SECOND. That the construction of a good wagon road from the forks of the Missouri, on the east, to the junction of Snake and Clearwater rivers, on the west, would not only be of great service, in a military point of view, to the government of the United States, but would also confer incalculable advantages upon the people of the Northwestern States and the North Pacific States and Territories, and, from its proposed route, would tend to bind the two eastern and western sections of the Union more firmly in sympathy, agricultural, mining, and commercial interests, than any other route across these great chains of mountains.

THIRD. That there now exists regular steamboat navigation upon the Columbia and its tributary, the Snake, as far east from the Pacific ocean as the mouth of the Clearwater, during several months in each year.

FOURTH. That navigation of the Missouri for steamboats, as far west as Fort Benton, has been tested by the ascent of steamers to that point.

FIFTH. That recent explorations have demonstrated the existence of equally good navigation of the Missouri after passing the falls, above Fort Benton, as far as the Three Forks; and already a company is organized for the purpose of constructing a railroad portage around these falls.

SIXTH. That a wagon road constructed from the mouth of Clearwater to the Three Forks of the Missouri would become the nearest connecting link between these waters, which can ever become a great thoroughfare of travel between the East and West; and the entire length of the this route would not exceed three hundred and fifty miles, and would lie a little north of the forty-sixth parallel, and between the thirty-fourth and fortieth meridian of longitude west from Washington. And your memorialists would further represent that the construction of this road is entirely practicable, and at a cost of one-half the amount expended in the construction of the road opened by Lieutenant John Mullen from Fort Benton to the Columbia river. In support of this representation, your memorialists would call the attention of your honorable body to the following facts, which have been demonstrated during the past year to the citizens of this territory, and which are now beyond further controversy, to-wit:

FIRST. From Gallatin City, at the Three Forks of the Missouri, westward, the country is open and rolling, and a practicable, though natural wagon road already exists along the whole route, through Big Hole and Ross passes, and across to the west side of the head of Bitter Root valley.

SECOND. From the mouth of Clearwater river, the country is open table land for a distance of ninety miles eastward along this route, and seventy-five miles of wagon road is already open and traveled upon by loaded wagons.

THIRD. There remains of this entire distance, over which wagons cannot now pass with ease and rapidity, but one hundred and twenty-five miles; and of this remainder, numerous intervals of five, ten and fifteen miles, in all, more than one-half the distance, no grading will be required, and no standing timber will obstruct; the remaining half will require both the removal of standing timber and occasional grading around abrupt points of hills, in order to complete a good practicable wagon road.

FOURTH. The most difficult portion of this route was frequently traveled the past season by large trains of horses and

mules, each laden with goods to the amount of from two hundred and fifty to four hundred pounds weight.

FIFTH. With the exception of about seventy-five or eighty miles, along the whole route from the mouth of Clearwater to Gallatin City, there exists arable lands, some of which are rich and capable of sustaining a dense population; and with the exception of one hundred and twenty-five miles of the distance along the whole route, stock can range and support themselves through the entire year without human aid.

SIXTH. This entire route, with the exception of eighty miles, is regularly traveled in mild winter by both horsemen and footmen.

In the opinion of your memorialists, an appropriation of fifty thousand dollars, judiciously expended, would be ample to construct and open this road; and when once opened, the enterprise of our people would be sufficient to keep it open and in repair; so that, for nearly every month in each year, it would become an extensively traveled highway, and confer exceedingly great and permanent advantages upon the people of the Union, not only as a means of military defence, but as greatly stimulating commerce between the east and the west. For the construction of this road, at an early period, we, your memorialists, as in duty bound, will ever pray.

APPROVED January 8, 1864.

MEMORIAL

To the Secretary of the Interior, praying a Treaty to be made with the hostile Indians of Yellowstone and vicinity.

*To the Honorable, the Secretary of the Interior of the United States :
Your memorialists, the Legislative Assembly of the
Territory of Idaho, respectfully represent :*

FIRST. That the valleys of the Yellowstone and its branches comprise an extensive tract of valuable land, well adapted to cultivation, highly fitted for stock growing, and in every respect inviting to the industrial pursuits of American enterprise.

SECOND. That the mountains from which said river and its numerous affluents flow, are known to contain deposits of

gold, quicksilver, and other metals, scattered all along the Wind river, Big Horn river, and Rocky mountains.

THIRD. That the Yellowstone river is believed to be navigable for seven hundred and fifty miles from its confluence with the Missouri.

FOURTH. That the rapidly increasing population of the mining districts, demands a sufficient amount of arable land to support them, and that this section of the country is indispensably necessary to said population, for purposes of cultivation and civilization.

FIFTH. That efforts have already been made to occupy and colonize said regions, and parties who have penetrated and prospected the same during the summer of 1863, have been driven out.

SIXTH. That, if the country is once opened, it will be speedily occupied by thousands of loyal citizens, and the population in a few years will entitle them to a State government.

SEVENTH. That finally, the only obstacle to affect access to this attractive and desirable country, is the hostility of the Crow and Sioux bands of Indians, who are pressing them back toward the mountains.

Therefore your memorialists would recommend and pray that a treaty may be entered into and concluded with the hostile Indians of the Yellowstone and vicinity; that the Indian titles may be extinguished, and white settlers may be protected in the occupancy and development of this interesting and valuable portion of the public domain. And your memorialists will ever pray.

APPROVED January 16th, 1864.

MEMORIAL

Praying for the establishment of a Mail Route from Salt Lake City, in Utah Territory, to Lewiston, in Idaho Territory.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the members of the legislative assembly of the territory of Idaho, would respectfully but most earnestly represent the inconvenience we suffer from the want of proper

mail facilities. We are comparatively without mails throughout the territory. We are made to depend upon express riders for letters and newspapers, for the delivery and sale of which the most exorbitant prices are charged, thus entailing a heavy and, as we believe, an oppressive burden upon twenty thousand inhabitants.

Your memorialists would ask and recommend a tri-weekly mail from Salt Lake City, in the territory of Utah, by way of Boise City, Bannock City, Centerville, Pioneer City to Placerville. And we do further pray that a mail be carried from Placerville to Lewiston once a week. Such a route, we believe, would be of the first importance in curing the ills of which we complain, occupying as we do a half-way position between the Atlantic and Pacific oceans, the route we ask is, in a great degree, indispensable to our prosperity.

We would not importune congress on this subject if it were not that we are satisfied that the revenue accruing to the post-office department would equal, if not exceed, the expenses attendant upon the establishment of the route, for which we most earnestly pray your honorable body.

APPROVED, January 4th, 1864.

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GENERAL INDEX

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